IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-347-2015 (O&M)
Date of decision:- 30.11.2016

The Pr. Commissioner of Income Tax, Gurgaon

...Appellant

Versus

M/s Atotech India Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL

Present:- Mr. Tajender K. Joshi, Advocate,
for the appellant.

Mr. Salil Kapoor, Advocate,
Mr. Sumit Lalchandani, Advocate,
for the respondent.

* * * *

S.J. VAZIFDAR, C.J. (ORAL)

This is an appeal against the order of the Tribunal allowing the respondent/assessee's appeal against the order of the CIT (Appeals) in respect of the assessment year 2004-2005.

2. According to the appellant, the following substantial questions of law arise:-

> "1. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in cancelling the penalty u/s 271(1)(c) of the Income Tax Act, 1961 of Rs. 62,41,758/-?
>
> 2. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in holding that rejection of the patently wrong claim of the assessee of setting off of brought forward business loss in its return of income would not amount to furnishing of inaccurate particulars of income/concealment of income and would not be liable for

penalty u/s 271(1)(c) of the IT Act, 1961?"

3. The question is whether the assessee is liable to penalty in view of its change of stand in respect of its return of income for the said assessment year.

4. The assessee was earlier known as Max Atotech Limited. It appears initially to have been a private limited company and was thereafter converted into a public limited company. For the assessment year 2004-2005, the assessee in its return of income sought to set off its income against the brought forward business losses of the earlier years. Proceedings under Section 143 of the Income Tax Act, 1961 (in short the Act) were initiated in the course of which the assessee by a letter dated 13.12.2006 claimed the above set off against another head, namely, of unabsorbed depreciation. Admittedly, the tax effect in either case is nil. Further, it is admitted that even if the respondent was permitted to claim the set off against the unabsorbed depreciation, it would have no financial implication for the future.

5. The decision of the Tribunal that the respondent ought not to be made liable for penalty cannot be said to be perverse or absurd.

6. The Tribunal noted that the respondent had claimed the set off of its business income of Rs. 1.85 crores against the brought forward business losses of the earlier years on the basis of a legal opinion received from a leading firm of Chartered Accountants dated 15.06.2001. The Tribunal found nothing clandestine in the manner in which the opinion was sought. In any event, even our attention was not invited to anything which suggests any malafides either in the obtaining of the opinion or otherwise. Further, the loss was allowed to be carried forward in the assessment year, namely, assessment year 2002-2003. Inter alia, in these circumstances, the Tribunal found as a matter of fact that the letter dated 13.12.2006 was voluntary and not merely because a notice

had been issued under Section 143(2) of the Act. This is a perception on the basis of the facts of the case and warrants no interference.

7. In these circumstances including in view of the fact that there is no financial implication on account of the change in the basis of the claim, no substantial question of law arises in this case.

8. The appeal is, therefore, dismissed.

9. In view thereof, it is not necessary to consider the cross objections filed by the respondent.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

30.11.2016
Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No