HIGH COURT OF DELHI AT NEW DELHI.

ITA NO. 49 OF 2000

Date of decision : September 26, 2000

Commissioner of Income-tax .....Appellant
Delhi-VIII. .....Through Mr. Ajay Jha
Advocate.

-VERSUS -

M/s. Mecon Builders & Engineers ....Respondent
.....Through Mr.K.P.Bhatnagar
Advocate.

Coram :-

THE HON'BLE MR. JUSTICE ARIJIT PASAYAT, C. J.
THE HON'BLE MR. JUSTICE D.K. JAIN

i) Whether Reporters of local papers may be allowed to see the judgment?

ii) To be referred to the reporter or not?

Arijit Pasayat, C. J.

1. This appeal under Section 260-A of the Income-tax Act, 1961 (in short the 'Act') relates to the order of the Income-tax Appellate Tribunal, Delhi Bench "A" (in short the "Tribunal"). By its order dated 30.6.1999, in I.T.A. No. 7398 (Del) 92 penalty to the extent of Rs.1,69,900/- imposed under Section 271(1)(c) of the Act was cancelled.

2. Factual position in a nutshell is as follows:

Assessee a partnership firm was engaged in execution of civil construction works. In respect of the work relatable to the Vikaspuri Project, it had indicated the value of stock and work in progress at Rs.3,61,132/-. On examination of its 11th and 12th running

enhanced by Rs.3,08,401/-. Assessee agreed for the enhancement of the work. Accordingly, addition was made. Penalty proceedings under Section 271(1)(c) were initiated. Assessee's stand was that it had agreed to the addition on the understanding that for the subsequent assessment year, an equal amount would be given as deduction. It was pointed out that there was no concealment and on the other hand the factual position was to the effect that the amount of bill for the month of December 1987 was to be accounted for in the next year. The bill for the particular month is made at the end of the month. The work executed during the period is measured and the bill is prepared. Thereafter the bill is sent to the clients for verification of the amount and specification and for approval for payment. This took some time. Therefore the running bills for the month of December 1987 were accounted for in the next year. The plea did not find acceptance by the Assessing Officer who held that assessee had concealed the particulars of income by furnishing inaccurate particulars. Accordingly penalty of Rs.1,61,900/- was imposed. Matter was carried in appeal before the Commissioner of Income-tax (Appeals) [in short the "CIT(A)"] . It was submitted that there was no loss of Revenue as there was no change in the tax structure. Further, penalty does not become automatically imposable merely because of the fact that assessee had agreed to an addition. It was also pointed out that for the subsequent years i.e. 1989-90, deduction of an identical amount i.e. Rs.3,08,401/- was allowed. CIT(A) did not accept the contention and upheld the findings recorded by the Assessing Officer that assessee had concealed particulars of income. Matter was carried in appeal before the Tribunal. Taking note of the factual position as highlighted above, Tribunal was of the view that the Assessee was not guilty of any contumacious conduct or any gross or willful neglect. Accordingly penalty was cancelled.

3. Learned counsel for the Revenue submitted that the return for the year 1989-90 was submitted after the detection of the discrepancy during the course of assessment proceedings for the preceding year i.e. 1988-89. Therefore, the filing of return indicating

the figures for the subsequent accounting year was of no consequence. Ld. for the Assessee, on the other hand submitted that there was no difference in tax effect as rate of tax was same for both the years. Accordingly assessee had agreed to the addition. Mere concession to make an addition does not per se lead to an inference of guilt or acceptance of concealment. Therefore Tribunal was justified in canceling the penalty.

4. At this juncture it would be necessary to take note of the explanation furnished by the Assessee and the submissions made before the authorities. It needs to be pointed out that there is specific mention about the stand of the assessee regarding absence of any tax effect. We find that Tribunal on consideration of the factual position came to hold as follows:

> "We have carefully considered the facts and circumstances of the case, the material to which our attention was invited and the rival submissions. What appears from the penalty order is that the assessee has been held guilty of concealing the particulars of its income merely because it had agreed to an addition of Rs.3,08,401/-. In view of the Apex Court decision (Supra), merely because the assessee had agreed to certain addition it did not automatically follow that the amount agreed to be added was the concealed income. We find that neither in the assessment order nor in the penalty order the AO has given any basis for coming to the conclusion that the assessee had concealed the particulars of its income. The penalty has been imposed under the main provisions of section 271(1)(c) of the Act but it is not shown in any manner that the assessee was guilty of contumacious conduct or any gross or willful neglect. We are of the considered opinion that the essential ingredients of section 271(1)(c) are not satisfied. Accordingly, we hold that for the addition of Rs.3,08,401/- no penalty was exigible u/s.271(1)(c) of the I.T.Act. The orders of authorities below are set aside.
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> In the result, the appeal is allowed."

5. Though it cannot be laid down as a principle of universal application that whenever addition is made on concession, penalty is not to be levied, the factual position in each case has to be considered and the background in which an agreement is made for the addition has to be taken note of. The fact that for the subsequent period deduction has been granted is a relevant factor that has been

duly noted by the Tribunal. In the circumstances, we find nothing wron conclusion of the Tribunal canceling the penalty. The appeal is not entertained.

CHEIF JUSTICE

SEPTEMBER 26, 2000
SG

D.K.JAIN, J.