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**HIGH COURT OF DELHI : NEW DELHI**

+ **ITA No.26 of 2005**

Judgement reserved on: April 11, 2005

% Judgement delivered on: May 5, 2005

# **Commissioner of Income Tax**  
**Delhi-I, New Delhi.** **...Appellant**

! **Through Mr.Jagdish R.Goel, Adv.**

**Versus**

\$ **M/s. Ashoka Mercantile Ltd.**  
**202, Ahluwalia House,**  
**2117-18, Bank Street,**  
**Karol Bagh,**  
**New Delhi-110 005.** **...Respondent**

^ **Through Mr.Santosh Aggarwal, Adv.**



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Coram:

\* **HON'BLE MR. JUSTICE SWATANTER KUMAR**  
**HON'BLE MR. JUSTICE MADAN B. LOKUR**

1. Whether the Reporters of local papers may be allowed to see the judgement? Yes
2. To be referred to Reporter or not? Not necessary
3. Whether the judgement should be reported in the Digest? Not necessary

\* **MADAN B. LOKUR, J.**

The Revenue is aggrieved by an order dated 14<sup>th</sup> June, 2004 passed by the Income Tax Appellate Tribunal (for short the Tribunal) Delhi Bench 'E', New Delhi in ITA No.742/Del/2000.

2. The relevant assessment year is 1996-97.



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3. For an earlier assessment year, that is, 1995-96, the assessee had claimed depreciation in respect of property bearing No.53, Friends Colony, New Delhi, which was said to have been used by the assessee for purposes of business. This claim was repeated for the assessment year 1996-97.

4. For the assessment year 1995-96, the Assessing Officer disallowed the claim and, according to the assessee, in order to buy peace it got the dispute settled under the Kar Vivad Samadhan Scheme on 11<sup>th</sup> August, 1998.

5. On the very next day, that is, 12<sup>th</sup> August, 1998, the assessee withdrew the claim for depreciation for the assessment year 1996-97 in respect of the property used for business purposes, apparently on the ground that the issue was settled under the Kar Vivad Samadhan Scheme.



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6. The Assessing Officer in penalty proceedings initiated under Section 271 (1)(c) of the Act took the view that the explanation given by the assessee was not correct and that it had never used the building for business purposes and has wrongly claimed depreciation thereon. It was noted that the revised return filed by the assessee withdrawing the claim for depreciation was falsely made. Accordingly, the Assessing Officer took the view that the assessee had committed default by way of concealment in making a false claim for depreciation. An amount of Rs.1,20,800/- was imposed as penalty on the assessee.

7. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeal) [for short CIT (A)]. While deciding the appeal in favour of the



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assessee, the CIT (A) held that the revised return or a revised computation made by the assessee was voluntary and bona fide. It was also held on the facts of the case that the building had been used for office purposes. Therefore, the assessee was entitled to claim depreciation thereon. Accordingly, it was held that it was not a fit case for levy of penalty and the appeal filed by the assessee was allowed.

8. The Revenue then filed an appeal before the Tribunal in which it was contended that the CIT (A) had completely overlooked the view taken by the Assessing Officer for the earlier assessment year, that is, 1995-96. It is because of the view taken by the Assessing Officer for the earlier assessment year that the assessee had applied for having the dispute settled under the Kar Vivad Samadhan Scheme. As such it was submitted that the withdrawal of the



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claim for depreciation by the assessee was not bona fide.

9. The Tribunal did not agree with the Revenue and came to the conclusion that the assessee had settled the dispute under the Kar Vivad Samadhan Scheme on 11<sup>th</sup> August, 1998 and on the very next day had bona fide withdrawn its claim for depreciation in respect of the office premises. It was noted that the Assessing Officer had not asked the assessee for any clarification in respect of the claim for depreciation, although some other clarifications were sought for by a letter dated 7<sup>th</sup> August, 1998. An explanation with regard to the claim for depreciation was sought for only on 8<sup>th</sup> December, 1998, which was much after the dispute had been settled under the Kar Vivad Samadhan Scheme and the withdrawal of the claim for depreciation by the assessee. Under these circumstances, the Tribunal dismissed the



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appeal of the Revenue.

10. The contention urged by learned counsel for the Revenue in this appeal under Section 260-A of the Income Tax Act, 1961 is that the withdrawal of the claim by the assessee was not bona fide. We are of the view that this contention is liable to be rejected.

11. There is a clear finding of fact that the withdrawal of the claim by the assessee was subsequent to a settlement of the dispute under the Kar Vivad Samadhan Scheme on 11<sup>th</sup> August, 1998. On the very next day, the assessee withdrew its claim for depreciation. The Assessing Officer had not asked for any explanation or for any clarification from the assessee in respect of the claim for depreciation until 12<sup>th</sup> August, 1998. Therefore, it cannot but be



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concluded that the actions of the assessee in this regard were bona fide and this has been so held, quite rightly, by the CIT (A) as well as the Tribunal. We do not find any reason to interfere with these conclusions arrived at and no substantial question of law arises under the circumstances.

12. The fact that for the earlier assessment year 1995-96 also the Assessing Officer had rejected the claim of the assessee for depreciation does not really detract from the conclusions arrived at by the CIT (A) and the Tribunal. This is because the assessee had clearly stated that it opted for the Kar Vivad Samadhan Scheme only to buy peace and have the matter resolved. The moment the matter was resolved, the assessee withdrew its claim for depreciation. No fault can be found in this step taken by the assessee, nor does it show that the actions of the assessee were either not voluntary or



not bona fide.

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13. The Tribunal also held that the Assessing Officer did not record any satisfaction for initiation of penalty proceedings under Section 271 (1)(c) of the Act. Penalty proceedings were simply initiated but as held by this Court in *Commissioner of Income Tax vs. Super Metal Re-Rollers*, [2004] 265 ITR 82 (Delhi) and *Commissioner of Income Tax vs. Ram Commercial Enterprises Ltd.*, [2000]246 ITR 568 (Delhi) that the Assessing Officer is expected to record his satisfaction that penalty proceedings are warranted. The mere fact that penalty proceedings are initiated cannot lead to any presumption that the satisfaction of the Assessing Officer had been duly arrived at and must be deemed to have been spelt out.



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14. Dismissed.

*Madan Lokur*  
( Madan B. Lokur )  
Judge

May 5, 2005  
kapil

*Swatanter Kumar*  
( Swatanter Kumar )  
Judge

Certified that the corrected copy of the  
judgment has been transmitted in the  
main Server.

*Swatanter Kumar*  
PS  
5/5/05