



Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ ITA 295/2003</p> <p>COMMISSIONER OF INCOME TAX DELHI Petitioner Through Ms. Prem Lata Bansal, Adv.</p> <p style="text-align: center;">versus</p> <p>VISHWANT KUMAR Respondent Through Mr. Salil Aggarwal with Mr. Prakash Kumar, Adv.</p> <p>CORAM: HON'BLE MR. JUSTICE SWATANTER KUMAR HON'BLE MR. JUSTICE MADAN B. LOKUR</p> <p style="text-align: center;"><u>ORDER</u> 03.01.2005</p> <p>%</p> <p>This is an appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as Act) against the order dated 21st November, 2002 passed by the Income Tax Appellate Tribunal, Delhi.</p> <p>Vide the impugned order the Appellate Tribunal had disposed of an appeal by the Department and the cross appeal by the assessee against the order of the Commissioner of Income Tax (Appeals)-II, New Delhi dated 29th November, 1996. We feel it will be appropriate to refer to the</p> <p><i>ITA 295 of 2003</i> <i>page 1 of 5</i></p>



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		<p>following content of the order impugned before us rather than mentioned the facts of the case in detail.</p> <p>"4. It has been observed by the assessing officer that opportunity was given to the assessee vide letter dated 24.1.1991 fixing the case for 4.2.1991. In response to notice the assessee has filed a letter stating that return was filed vide receipt No.36383 and a copy of the same was enclosed. Again in his reply dated 19.2.1991 he has enclosed a duplicate return stating to have been filed in Distt. VIII(4) vide receipt No.36383. On scrutiny of the receipt it was not clear when the return was filed. The alleged receipt stamp was found illegible by the AO. Hence it could not be deciphered as to where this return was filed or when the return was filed. Therefore, the AO observed that this could not be accepted as evidence of filing of return of income for the assessment year 1983-84. More the assessee failed to furnish the proof of filing of the return during the assessment proceedings and even before the CIT(A) and also during the re-assessment proceedings. The AO has also noted the fact that the CIT(A) has also given a finding and justified the ITO's action in making the ex parte order under sec. 144 and dismissed the assessee's appeal. Hence, the assessing officer has assessed the income under sec.144 at Rs.17,36,520/- and assessed the tax at Rs.11,23,910/-. He has taken the due date of return as 31.7.1983 and original assessment made on 25/31.3.86. Therefore, considering the period of default as 31 months, he has imposed a penalty of Rs.6,96,820/- @ 2% per month against which the assessee went in appeal before the CIT(A) who has partly allowed the appeal of the assessee and held that the delay for the major period i.e. upto December, 1986 is liable to be condoned. He held that the penalty is thus liable to be imposed for a period of two months, i.e. after December, 1986 for which there was no good reason for the delay. Against this order of the CIT (A),</p>




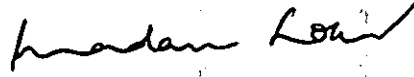
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		<p>revenue as well as the assessee, both are in appeal before the Tribunal.</p> <p>5. We have heard Shri Pawan Kumar, Sr. DR for the revenue and Shir Salil Agarwal learned AR for the assessee. It has been argued by the learned DR that due date for filing the return was 31.7.1983 while no return was filed. Date of search was 30.10.1982. Hence the CIT(A) was not justified in condoning the delay. On the other hand, the learned AR for the assessee has argued that the assessee was prevented by sufficient cause for not filing the return and the delay has been rightly condoned by the learned CIT(A) but penalty for two months delay has been retained which is not proper.</p> <p>6. After having heard both the parties ARs and considering the material on record, we are of the view that the CIT(A) has not erred in condoning the delay up to December, 1986 for reasonable and sufficient grounds and directing the AO to recalculate the penalty for a period of two months on the income finally determined. Hence, we do not find any infirmity in the order of the CIT(A) which we confirm and both the appeals are dismissed.</p> <p>7. In the result, the appeals of the department as well as of the assessee, are dismissed."</p> <p>The bare reading of the above finding clearly shows that they are finding of facts based upon the record produced before the Authorities and no question of law much less a substantial question of law arises for</p> <p><i>ITA 295 of 2003</i></p> <p><i>page 3 of 5</i></p>



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		<p>consideration in the present appeal. It will not be proper for this Court to interfere in the impugned order merely on the ground that on the facts aforeindicated it could be possible to take another view. Substantial question of law should arise in the case before the Court can interfere in such matters. Reference can be made to the Division Bench judgments of this Court in the cases of <i>Mahavir Woollen Mills vs. Commissioner of Income Tax (2000) 245 Income Tax Reports 297</i> and <i>Commissioner of Income-Tax vs. S.R. Fragnances Ltd. (2004) 270 Income Tax Reports 560</i>.</p> <p>It is contended by the learned counsel appearing for the Respondent that the account books and other records of the assessee were seized and they were provided inspection of the records only in January, 1986 as such they could not have taken any steps in compliance of the statutory provisions prior thereto. This can hardly be disputed and infact there is nothing on record before us to indicate to the contrary. Once the assessee was not in a position to have access to his records there was a sufficient cause before the Authorities to treat the period of penalty only for two months as indicated concurrently by the Appellate Authorities. The Authorities concerned have exercised their discretion and we see no apparent perversity in the said order. In fact the discretion has been</p> <p><i>ITA 295 of 2003</i></p>



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		<p data-bbox="475 257 1353 302">exercised in consonance with the settled principles of law.</p> <p data-bbox="561 340 880 385">No merit. Dismissed.</p> <p data-bbox="1040 510 1481 555"> SWATANTER KUMAR, J</p> <p data-bbox="1040 721 1417 766"> MADAN B. LOKUR, J</p> <p data-bbox="466 766 785 810">JANUARY 03, 2005</p> <p data-bbox="466 810 513 846">rkr</p> <p data-bbox="475 1921 721 1966">ITA 295 of 2003</p>