



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 512/2003

THE COMMISSIONER OF INCOME TAX Appellant
Through Mr. R.D. Jolly with Ms.Sonia Mathur
& Mr.Deepak Kumar, Adv.

versus

M/S INDIA LEASE DEVELOPMENT LT Respondent
Through Mr. O.S. Bajpai, Adv.

CORAM:

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. JUSTICE B.N.CHATURVEDI

ORDER

07.12.2005

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This appeal arises out of an order passed by the Income-tax Appellate Tribunal, Delhi Bench, relevant to assessment year 1991-92, whereby the Tribunal has deleted the penalty levied upon the assessee under Section 271(1)(c) of the Income-tax Act, 1962.

Mr. Bajpai, learned counsel for the assessee, at the threshold argued that not only was the Tribunal justified in deleting the penalty on merits, no penalty could in fact been levied upon the assessee, in view of an order passed by the Commissioner of Income-tax under sub-section (2) of section 90 of what is known as "Kar Vivad Samadhan Scheme, 1998" granting immunity to the respondent against the levy of any penalty. He has placed a copy of the said order on record. He submits that because of some inadvertence on the part of the counsel appearing for the assessee, the attention of the Tribunal could not be drawn to the order granting immunity which would be an additional reason



why no penalty could have been levied on the assessee. He submits that the assessee would have no difficulty in going back to the Tribunal for the Tribunal to examine the effect of the immunity order and that for that purpose the matter could be remitted back.

We see considerable merit in the submission made by Mr. Bajpai. It is true that the Tribunal's attention does not appear to have been drawn to the order passed by the Commissioner granting immunity to the assessee under Section 90(2) of the Scheme afore-mentioned. That such an order has been made by the competent authority and would bear relevance to the issue regarding levy of penalty has not been disputed by Mr. Jolly, counsel for the Revenue. We, therefore, see no reason why the Tribunal cannot examine the effect of the immunity order vis-a-vis the levy of the penalty upon the assessee. We, accordingly, allow this appeal; set aside the order passed by the Tribunal and remit the matter back to it for a fresh order in accordance with the law, keeping in view the order passed by the Commissioner under Section 90(2) of the Scheme aforementioned.

The parties are directed to appear before the Tribunal on 12th January, 2006.


T.S. THAKUR, J


B.N. CHATURVEDI, J

DECEMBER 07, 2005