



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 1271/2006**

COMMISSIONER OF INCOME TAX Appellant
Through **Mr. R.D. Jolly**

versus

M/S INTERNATIONAL AUDIO VISUAL Respondent
Through

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

% **31.08.2006**

The Revenue is aggrieved by an order dated 18th May, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench 'C' in ITA No.4716/Del/2004 relevant for the assessment year 1989-90.

The Assessee had claimed a deduction under Section 80 HHC of the Income Tax Act in respect of dubbing rights of Hindi films, which it says, it had sold to some foreign company. The Assessing Officer



did not agree that it was a sale by the Assessee and concluded that it was not a sale of goods or merchandise but a receipt of royalty for transfer of dubbing rights.

Accordingly, he disallowed the claim for deduction under Section 80 HHC of the Act. The Assessing Officer also initiated penalty proceedings under Section 271 (1)(c) of the Act.

In response to the notice for initiating penalty proceedings, the Assessee reiterated that it had not concealed any income nor had it furnished any inaccurate particulars of income and prayed that the penalty proceedings be dropped. The Assessing Officer rejected the contention of the Assessee and imposed penalty under Section 271(1)(c) of the Act.

The appeal filed by the Assessee before the Commissioner of Income-tax (Appeals) was also dismissed. The second appeal filed by the Assessee before the Tribunal was, however, accepted and that is



how the Revenue is before us.

Having examined the record and heard learned counsel for the Revenue, we are of the opinion that there is nothing to suggest that the Assessee was in any manner trying to mislead the Assessing Officer. It appears that he had a bona fide belief that by selling dubbing rights to foreign company, he was selling goods or merchandise within the meaning of Section 80 HHC of the Act.

The Assessing Officer did not agree with this contention and concluded that the payment received by the Assessee was towards royalty and not sale of goods or merchandise. The contention urged by the Assessee may have been incorrect but there does not appear to be anything to suggest that it reflected on the particulars of the income of the Assessee or any concealment of his true income.

Under the circumstances, since there was no concealment of primary facts, it cannot be said that the Assessee was liable to suffer a



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penalty under the provisions of Section 271(1)(c) of the Act.

We do not find any error in the view taken by the Tribunal in concluding that the Assessee was not liable to be penalised for raising a contention which was not acceptable to the Assessing Officer. No substantial question of law arises for our consideration.

Dismissed.

Madan Lokur

MADAN B. LOKUR, J

Vipin Sanghi

VIPIN SANGHI, J

AUGUST 31, 2006

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