



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

+ **ITA 852/2006**

COMMISSIONER OF INCOME TAX
Through

..... Appellant
Ms. Prem Lata Bansal, Adv.

versus

M/S VIDE ON

Through

..... Respondent

Mr. Satyem Sethi with
Mr. Mau K. Siri, Adv.

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
10.07.2006

%

The Revenue is aggrieved by an order dated 16th September, 2005 passed by the Income Tax Appellate Tribunal Delhi Bench 'A', New Delhi in ITA No. 3887/Del/2004 relevant for the Assessment year 1993-94.

The Assessee had filed its return of income wherein it had disclosed a capital gain of Rs. 19,45,920/- from the sale of land. Thereafter, the Assessee filed a revised return wherein it claimed that the capital gain shown earlier was exempt from tax being agricultural land. This was on the basis of an advise received by it from the concerned Tehsildar as well as information received from the Municipal Corporation of Delhi. The Assessing Officer did not accept the withdrawal of capital gain.



The Assessee then filed an appeal before the Commissioner of Income Tax (Appeals) which was allowed.

The Revenue then took up the matter before the Tribunal and the matter was remanded on the file of the Assessing Officer for a re-consideration of the matter.

When matter was taken up by the Assessing Officer on remand, the Assessee admitted that the land was not agricultural land and surrendered its claim by not pressing the matter any further and paying the tax which was due.

Notwithstanding this, the Assessing Officer initiated penalty proceedings against the Assessee under Section 271 (1) (c) of the Income Tax Act.

Aggrieved by the order passed by the Assessing Officer in penalty proceedings, the Assessee approached the Commissioner of Income Tax (Appeals) who set aside the order passed by the Assessing Officer in the penalty proceedings on the ground that the Assessee had acted bona fide on the basis of an advise received from the Municipal Corporation, there was no malicious act and ill intention on the part of Assessee and that no facts were suppressed.

Aggrieved, the Revenue approached the Tribunal in appeal which was dismissed.

We are of the view that the opinion expressed by the Tribunal does not require any interference. Admittedly, the Assessee had



declared its income in the original return and in the revised return it was merely contended that it was entitled to exemption since the land was agricultural land. There is nothing to suggest that the Assessee concealed its income - the only dispute being whether the Assessee was entitled to exemption as claimed or not.

In view of the fact that there was no concealment of income nor was there any attempt on the part of the Assessee to hide any material facts from the Revenue, we do not see how any penalty under Section 271 (1) (c) was justified.

In our opinion, no substantial question of law arises. The appeal is dismissed.

The Assessee is entitled to costs of Rs. 1,500/-.


MADAN B. LOKUR, J


VIPIN SANGHI, J

JULY 10, 2006
ak