2006:DHC:25003-DB

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 1181/2006

COMMISSIONER OF INCOME TAX DEL ..... Appellant
Through Ms.P.L.Bansal, Advocate

versus

M/S VIBROS ORGANICS LTD. ..... Respondent
Through None

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

% **23.08.2006**

The Revenue is aggrieved by an order dated 28th February, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'I' in ITA No. 3806/Del/2005 relevant for the assessment year 2001-2002.

The assessee is a company engaged in the business of manufacturing chemicals. For the year under consideration it declared a loss and also claimed depreciation to the tune of Rs. 32,83,710/-. The Assessing Officer was of the view that the claim for depreciation could not be allowed

since there was no manufacturing activity carried on by the assessee during the relevant previous year.

The assessee filed an appeal which was considered and then dismissed by the Commissioner of Income Tax (Appeals). The assessee accepted the view of the CIT (A) and did not take up the matter any further.

Subsequently penalty proceedings were initiated against the assessee under the provisions of Section 271(1) (c) of the Income Tax Act. In response, the assessee contended that there was a bona fide difference of opinion between the assessee and the Assessing Officer on the question whether depreciation should be allowed or not and, therefore, no cause for imposition of penalty was made out. This contention was rejected by the Assessing Officer as well as by the CIT (A). However, in second appeal the Tribunal accepted the contention and that is why the Revenue has filed this appeal under Section 260A of the Act.

The Tribunal has noted that during the relevant previous year the assessee had addressed letters to at least three parties, one in Spain and two in India. In terms of this correspondence, it appears that the assessee was

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willing to supply chemicals to these parties in the relevant previous yea against specific orders but negotiations between them could not fructify. The Tribunal considered the correspondence and expressed the view that the assessee nurtured the hope of reviving its business of manufacturing chemicals and undertaking to supply products against firm orders.

Additionally, it was noticed by the Tribunal that the assessee had filed its audited statements and in Schedule 13 containing the accounting policies and notes to the accounts, it was stated that the production facilities could not be resumed due to financial constraints but the management of the company had taken steps to resume production. From all these facts, the Tribunal came to the conclusion that the assessee had the intention of carrying on its business and using its plant and machinery but due to lack of any specific orders, it was unable to do so.

In *Capital Bus Service (P) Ltd. vs. Commissioner of Income Tax [1980] 123 ITR 404*, this Court reviewed the entire case law and concluded that the consensus of opinion was in favour of adopting a liberal interpretation to the word "used" as appearing in Section 10(2) of the

Income Tax Act, 1922 which corresponds to Section 32(1) of the Income Tax Act, 1961. This being the position, it would appear that the assessee had its plant and machinery ready for use for the purpose of manufacturing chemicals but it could not do so due to lack of firm commitments having been obtained by the assessee.

However, we need not go further into this issue because the question whether the assessee was entitled to depreciation or not has become final with the assessee having accepted the order passed by the CIT (A). We have discussed this issue only with reference to the contention raised by the assessee to the effect that there could be two opinions in the matter and, therefore, the provisions of Section 271 (1) (c) of the Act could not have been invoked by the Revenue for levying penalty on the Assessee.

We find that under these circumstances and in view of the fact that a plausible argument was raised by the assessee, the Tribunal was right in holding that the Revenue did not make out any case for initiating penalty proceedings under the Act on the ground that the assessee furnished inaccurate particulars.

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We are of the view that no substantial question of law arises for our consideration.

The appeal is dismissed.

MADAN B. LOKUR, J

VIPIN SANGHI, J

AUGUST 23, 2006

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