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% 04.09.2008

Present: Mr R.D. Jolly with Mr Paras Chaudhary for Appellant.
Mr Ajay Vohra with Ms Kavita Jha and Mr Sriram
Krishna for the Respondent.

+ ITA Nos. 318/2008 & 319/2008

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These appeals arise out of the common order of the tribunal dated 06.07.2007 which relates to the assessment years 2000-01 and 2001-02. The issue which arises in these appeals pertains to the levy of penalty under Section 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as 'the said Act'). This issue arises in connection of the deduction claimed by the assessee under Section 80 HHD.

2. We have heard the counsel for the parties at length and have also examined the orders passed by the authorities below. We note that the tribunal has observed that the action of the assessee in excluding the disclaimed foreign exchange receipts from the total foreign exchange receipts as well as from the total business receipts for the purposes of computing deduction under Section 80 HHD has been finally accepted by the tribunal in the quantum proceedings and



consequently, the very basis to impose penalty under Section 271(1)(c) in respect of this aspect does not survive. The counsel for the parties have informed this court that the appeal preferred against that decision of the tribunal before this court has also been dismissed by this court and the order passed therein has been reported as *Commissioner of Income-tax v. Lotus Trans Travels Pvt. Ltd:* 290 ITR 1.

3. With regard to the question of inclusion of the interest income in the business income for the purpose of computing deduction under Section 80 HHD, the tribunal was of the view that the same was a debatable issue and that appeals in respect of this issue were pending before this court. Considering this fact, the tribunal returned a finding that the claim made by the assessee for deduction under Section 80 HHD was *bona fide* being based on adoption of one of the possible views. The tribunal also found that the assessee had furnished all the material facts relevant to the said claim and, therefore, it could not be said that the assessee had concealed income by furnishing inaccurate particulars so as to attract penalty under Section 271(1)(c). The fact that the claim of the assessee was not

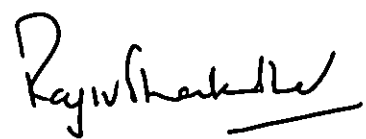


finally accepted in the quantum proceedings before the tribunal would not by itself be a ground for justifying the imposition and levy of penalty under Section 271(1)(c) of the said Act.

4. We are in agreement with the findings recorded by the tribunal with regard to the penalty proceedings. The tribunal has correctly appreciated the law on this aspect and has applied it to the facts determined by it. No cause for interference has been made out by the appellant. No substantial question of law arises for our consideration.

These appeals are dismissed.


BADAR DURREZ AHMED, J


RAJIV SHAKDHER, J

September 04, 2008

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