



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

+ **ITA 847/2007, 845/2007, 846/2007, 853/2007, 906/2007**

COMMISSIONER OF INCOME TAX (TDS) Appellant
Through Mrs. P.L. Bansal, Adv.

versus

GOM OVERSEAS LTD Respondent
Through Mr. Satish Khosla, Adv.

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER

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07.05.2008

The Revenue is aggrieved by an order dated 19th January, 2007 passed by the Income Tax Appellate Tribunal, Delhi Bench 'G' (the Tribunal) in ITA Nos. 3937 to 3941/Del/2005 relevant to the Financial Years 2000-01 and 2001-02 as well as ITA Nos. 4611 to 4612/Del/2005 relevant for the Assessment Year 2001-02 and 2002-03.

A penalty was imposed on the Assessee under Section 272A(2)(g) of the Income Tax Act, 1962 (the Act) on the ground that the Assessee had failed to furnish TDS certificates as required by Section 203 or Section 206C of the Act.



According to the Assessee, it was under a bona fide belief that the certificate is to be produced after the tax is deposited and it is for this reason that the certificate was not given to the deductee prior to that date. The Assessee also stated that in respect of the financial years 1997-98 to 1999-2000 the Assessee happened to hold a similar bona fide belief and for these financial years no penalty was imposed by the Revenue and, therefore, the Assessee continued to hold the same bona fide belief.

On 11th September, 2007, we had required learned counsel for the Revenue to check up why penalty was not imposed on the Assessee in respect of financial years 1997-98 to 1999-2000 (three years). Since then, learned counsel for the Revenue has taken three adjournments to obtain instructions. On 28th February, 2008, a last opportunity was granted to learned counsel for the Revenue to obtain instructions in terms of our order dated 11th September, 2007 but today she informs us that the record of the case is not available. Therefore, we have to accept the conclusion that penalty was not imposed upon the Assessee under Section 272A(2)(g) of the Act for a good reason which is that the Assessee had a bona fide belief that it was not required to submit a TDS certificate to the deductee before the actual deduction of tax.



That being the position, no substantial question of law arises for consideration.

The appeals are dismissed.

Since we have dismissed the appeals on the ground that penalty was not validly imposed, we are not going into the question whether imposition of penalty was barred by time or not.


MADAN B. LOKUR, J


MANMOHAN SINGH, J

MAY 07, 2008

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