



% 17.09.2009

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Present: Ms. P.L. Bansal with Ms. Anshul Sharma and Mr. Paras Chaudhary, Advs. for the appellant.
Ms. Aarti Saini, Adv. for the respondent.

+CM Appl. No. 6711/20089

Exemption is allowed, subject to just exceptions.

CM is disposed of.

ITA No.664/2009

The Assessing Officer found in proceedings under Section 147 of the Income Tax assessee that the assessee had claimed expenses of Rs.65,55,173/- for the assessment year 2002-03. During the proceedings, the AO found that the assessee had earned interest of Rs.14,16,103/-. Further, the assessee had kept the shares as investment and no business activity of sale/purchase of shares had been carried out during the year. He further noticed that part of the investment had been sold by the assessee during the year. Accordingly, he allowed the interest attributable to the investment sold during the year and disallowed a sum of Rs.48,60,120/- on proportionate basis. The AO also disallowed the other expenses of Rs.2,52,272/- for want of supporting evidence. At the same time, proceedings under Section 271(1)(c) were also initiated against the assessee on the ground that the assessee had



knowingly concealed the particulars of income, thus penalty imposed. This order of penalty was set aside by the CIT(A) and the ITAT vide its impugned order has affirmed the order of the CIT(A).

The Tribunal deleted the penalty on the ground that the deduction on account of claim by the assessee was disallowed by the AO on the basis of difference of opinion. According to the ITAT, the claim made by the assessee was *bona fide*. In this behalf, the most relevant consideration, which is taken note of by the ITAT is that in the assessee's own case for the Assessment Year 1996-97 when AO had disallowed identical expenditure, the said addition was deleted by the CIT(A) as well as the Tribunal and the decision of the Tribunal was upheld by this Court in the case of *Commissioner of Income Tax Vs. Raghav Behl*, 286 ITR 134. On this premise, the ITAT observed that there was sufficient ground to show that the claim on account of interest made in the income return filed was *bona fide* for the assessment year 2002-03. There were two possible views as to whether such an expenditure was to be treated as business expenditure or not.



We are, therefore, of the opinion that no substantial question
of law arises for our consideration, this appeal is accordingly dismissed.


A.K. SIKRI, J.


VALMIKI J. MEHTA, J.

September 17, 2009
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