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%10.07.2009

Present: Ms. Rashmi Chopra, Advocate for the appellant.
Ms. Rani Kiyala, Advocate for the respondent.

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The assessee herein had not deducted tax at source from its employees qua meal and conveyance allowances. This was treated as short deduction of tax by the assessing officer and on that basis assessment a search was carried out. At the same time penalty proceedings were also initiated against the assessee under section 271 C of the Income Tax Act for short deduction of tax and penalty order dated 30.6.1998 was passed. In appeal preferred by the assessee CIT (A) allowed the appeal partly. The matter was taken up by the Income Tax Department before the ITAT by filing appeal against the order of CIT (A).

It so happened that against the assessment orders the assessee had gone in appeal and ITAT allowed the appeal on the ground that assessment was made after four years and was thus barred by limitation. Appeal of the revenue preferred under section 260A of the Income Tax Act before this Court also failed and this Court affirmed the order of the ITAT. Since the very assessment, in this manner, was set aside, the ITAT has dismissed the



appeal of the revenue against the orders passed under Section 271C as v...
by the impugned order.

Learned counsel for the appellant submits that against the orders passed by this Court affirming the order of the ITAT setting aside the assessment as time barred revenue has filed the Special Leave Petition in which notice has been issued and the said SLP coming up for disposal sometime in December, 2009. In these circumstances, the present appeal is disposed of with the observations that in case the SLP/civil appeal is allowed by the Supreme Court and the assessment restored, the appellant shall be entitled to move application before the ITAT for revival of Appeal No.3847/Del/2003 on the issue of penalty for decision of the said appeal on merits.

The appeal stands disposed of in the aforesaid terms.


A.K.SIKRI, J


VALMIKI J.MEHTA, J

July 10, 2009
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