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% 23.12.2009

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Present: Mr. Sanjeev Sabharwal, Adv. for the petitioner.

+CM No. 17915/2009 in ITA No. 1392/2009

* For the reasons stated in the application, delay is condoned.

Application stands disposed of.

ITA No. 1392/2009

Penalty imposed upon the assessee was set aside by the CIT, Delhi which order is affirmed by the ITAT. Perusal of the order of the ITAT shows that it has discussed the matter in detail and has found that addition on account of prior period expenses was originally made and the assessee had neither given inaccurate particulars nor wrong disclosure while filling the return.

The issue in respect of the additions made in the assessment order is discusses in the following manner:

“In this regard, it is observed that the addition on account of prior period expenses was originally made by the AO to the extent of Rs.19,82,108/-. The learned CIT(A), however, restricted the same to Rs.12,38,642/- in the quantum proceedings after having found that the claim of the assessee for the said expenses was allowable to the extent of Rs.7,43,466/-. It is clearly shows that the deduction claimed by the assessee on account of prior period expenses was disallowed by the AO and the said disallowance was partly sustained by the learned CIT(A) as a result of difference of opinion. The genuineness of the said expenses as



well as the fact that the said expenses were incurred by the assessee company for the purpose of its business, however, was not disputed either by the AO or by the learned CIT(A) and the disallowance was sustained in the quantum proceedings merely on the ground that the expenses were not pertaining to the year under consideration but they had pertained to the earlier year. In the case of CIT Vs. Manilal Tarachand -254 ITR 630, the dispute between the assessee and the department in the assessment was to the effect as to in which year the compensation received by the assessee was taxable. The assessee was under a belief that he would be liable to capital gains tax only on receipt of compensation and accordingly had shown the liability to capital gains tax in his return of income for AY 1975-76. In the reassessment, capital gains tax on receipt of the compensation, however was held to be chargeable in AY 1973-74 and although the said reassessment was upheld, Hon'ble Gujarat High Court held that it was not possible to hold that penalty u/s 271(1)(c) could be levied for AY 1973-74. Moreover, in the present case, the prior period expenses were claimed by the assessee as per the policy consistently followed by it in the earlier years and this explanation offered by the assessee substantiate the said claim was not found to be false by the AO.

No question of law arises for consideration.

Dismissed.

A.K. SIKRI, J.

SIDDHARTH MRIDUL, J.

December 23, 2009

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