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

+ **ITA 33/2008**

COMMISSIONER OF INCOME TAX DELHI CENTRAL III Appellant

Through: Mr. Sanjeev Sabharwal, Advocate

versus

HCL TECHNOLOGIES LTD. Respondent

Through: Mr. Ajay Vohra with Ms. Kavita Jha,
Ms. Akansha Aggarwal and
Mr. Somnath Shukla, Advocates

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI

HON'BLE MS. JUSTICE REVA KHETRAPAL

ORDER
22.07.2010

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This appeal is preferred by the Department under Section 260A of the Income Tax Act (in short 'the Act') challenging the orders dated 04.05.2007 passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') whereby the Tribunal has quashed the levy of penalty imposed upon the respondent-assessee under Section 271(1)(c) of the Act. The penalty was imposed in the following circumstances:



The assessee filed return of income declaring income (Rs.57,77,08,590/-). It was found that the assessee has entered into an international transaction within the meaning of Section 92B of the Act. The assessee had advanced a loan to its subsidiary company free of interest. In the audit report obtained under Section 92E of the Act, the amount of interest chargeable was disclosed for a sum of Rs.92,70,000/-. The Assessing Officer (AO) referred the matter to the Transfer Pricing Officer (TPO) for computation of Arm's Length Price as per Section 92C of the Act. Pursuant to the reference made by the AO, the TPO by his notice dated 07.07.2004 required the assessee to furnish certain information like, (i) Balance sheet and profit and loss account together with auditor's report; (ii) Statement of computation of total income; and (iii) Information and documents maintained as prescribed under Section 92 of the Act. The assessee had filed the letter dated 03.08.2004 wherein it filed revised computation of total income by including the sum of Rs.92,70,000/- as part of its total income. All necessary documents were also filed on 03.08.2004. The TPO by his order dated 30.12.2004 directed the AO to make an adjustment of Rs.92,70,000/- to the total income. Accordingly, assessment was completed by including the sum of Rs.92,70,000/-. The AO held that the assessee has concealed the particulars of his income to the above extent. He accordingly levied penalty of Rs.33,09,390/-. Learned CIT(A) held that revised computation was filed



on 03.08.2004 after the notice was issued by TPO. Though it is not case of concealments of income but it is a case where inaccurate particulars have been furnished. The revised computation is filed after 21 months of filing original returns. He, accordingly, confirmed the penalty.

The Tribunal was of the view that there was neither any concealments nor furnishing of inaccurate particulars. In fact, it was a case of *bona fide* omission on the part of the assessee to include notional interest income. Further, even before it could be detected by the assessing authority, the same had been offered for taxation. In this behalf, it has to be noted that after the notice dated 07.07.2004 issued by the TPO calling upon the assessee to file certain documents, the date of hearing was fixed by him on 21.08.2008. Before this date itself, as noted above, the assessee had filed letter dated 03.08.2004 giving revised computation of total income by including the sum of Rs.92.70 lakhs as a part of its income. It was also explained that the audit report by the assessee, on the basis of which aforesaid sum of Rs.92.70 lakhs was offered for income, was received only on 31.10.2002 which was the last date of filing the return of income and therefore, in all likelihood, the same was missed while filing the return of income.



It is the findings recorded by the Tribunal that it was on an inadvertence omission by taking into consideration aforesaid facts cannot be faulted with. It cannot be said that it gives rise to any question of law.

Another important aspect, which needs to be mentioned at this stage is that the very question as to whether the notional income in such an international transaction is liable to tax at all or not is a question which has still not been authoritatively determined by the jurisdictional High Court. However, this Court in ITA Nos.683-85 of 2010, has admitted this very question as substantial question of law arising for consideration and this matter is sub-judiced. Thus, as of now, when there is a dispute as to whether such notional interest income of Rs.92.70 lakhs would be liable for tax or not, the imposition of penalty would not arise at all, moreso when in the present case the assessee has even offered the said income for taxation and paid the tax thereon.

We, thus, are of the opinion that no substantial question of law arise for consideration. This appeal is dismissed accordingly.


A.K.SIKRI, J


REVA KHETRAPAL, J

JULY 22, 2010