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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ITR No. 551 /2009**% **DATE OF DECISION: July 30, 2010****COMMISSIONER OF INCOME TAX DELHI VI** Appellant
Through: **Ms.Prem Lata Bansal**

versus

UNOCAL BHIARAT SERVICES P.LTD. Respondent
Through: **Mr.Salil Kapoor with Mr.Sanat Kapoor,**
Advocate.**CORAM:****HON'BLE MR. JUSTICE A.K. SIKRI****HON'BLE MS. JUSTICE REVA KHETRAPAL**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

A.K. SIKRI, J. (ORAL)

1. This appeal relates to assessment year 2003-2004. The respondent/assessee had filed the return declaring a loss at Rs.5,24,65,430/-. During the assessment proceedings, the Assessing Officer noticed that the assessee had rendered services to its parent Company as well as its subsidiary companies and shown substantial expenditure incurred by the assessee for rendering those services. Those expenses were claimed as



deduction from the income. On the other hand, it was also found by the Assessing Officer that against those services rendered by the assessee, the assessee had not raised any bills upon its parent and subsidiary companies and, therefore, no income was shown in respect of such services rendered by the assessee. On this premise, the Assessing Officer did not allow the expenditure which was shown to have been incurred by the assessee while rendering these services.

2. At the same time, the Assessing Officer initiated penalty proceedings against the assessee under Section 271(1)(c) of the Income Tax Act. After giving opportunity to explain its case qua the show-cause notice proposing the penalty, the Assessing Officer passed the order dated 29.08.2006 imposing the penalty upon the assessee holding that assessee was trying to defraud Revenue by circumventing the provisions of law by using colorable devices, and its conduct was contumacious. It was the opinion of the Assessing Officer that as soon as services were rendered by the assessee, income accrued to it, which had not been declared. This according to the Assessing Officer amounted to furnishing inaccurate particulars of income.
3. The assessee preferred an appeal against this order of penalty passed by the Assessing Officer. The C.I.T.(Appeal) accepted the appeal of the assessee and deleted the penalty imposed by the



Assessing Officer. The C.I.T.(Appeal) relied upon the judgment of Delhi High Court including CIT Vs. Ram Commercial Enterprises Limited, 246 ITR 568 (Delhi), to the effect that while initiating the proceedings, no satisfaction was recorded by the Assessing Officer to the effect that the assessee had either concealed the income or furnished inaccurate particulars. Thus according to C.I.T.(Appeal), the very initiation of these proceedings was illegal, as pre-condition for taking steps under Section 271(1)(c) of the Act was to record satisfaction in the assessment order itself that there was concealment of income or furnishing of inaccurate particulars. Even on merits, the C.I.T.(Appeal) was of the opinion that the penalty imposed was unsustainable as neither any inaccurate particulars of income were given nor there was any concealment. He further observed that the assessee had claimed expenditure incurred by it and merely because assessee had not earned any income during the year, it would not lead to a conclusion that the assessee had made a wrong claim or had furnished inaccurate particulars of income.

4. It was now turn of the department to feel dissatisfied with the order of the C.I.T.(Appeal) and, therefore, the department preferred appeal before the Income-tax Appellate Tribunal, which was dismissed by the Income-tax Appellate Tribunal. The Income-tax Appellate Tribunal accepted the findings of the



C.I.T.(Appeal) and categorically observed that neither there is any concealment of income nor furnishing of inaccurate particulars. According to Income-tax Appellate Tribunal, it was a case of difference of opinion rather than furnishing inaccurate particulars of income. Feeling dissatisfied, present appeal is preferred by the department under Section 60A of the Income Tax Act.

5. After going through the orders and record, we are of the opinion that no substantial question of law arises. It becomes abundantly clear after going through the record that:

(i) The expenses which were claimed by the assessee were in fact duly incurred by the assessee in the relevant assessment year. It is not the case of the department that these expenses were bogus or inflated. Insofar as furnishing of information regarding expenses is concerned, it cannot be said that it was inaccurate. It would be entirely a different matter that though the assessee was claiming this expenditure, the Assessing Officer was of the opinion that in the facts and circumstances of the case, such expenditure was not allowable. That would not mean that the assessee had furnished inaccurate particulars;

(ii) It is also not the case of the Assessing Officer that income was in fact generated or that for the services rendered by the assessee, the assessee had in fact received the income but



did not disclose the same. There is no finding of this nature at all. Thus, it is also accepted that the assessee had not received any income. If there was no income, the question of not showing that income or making concealment in this behalf would not arise. It may be against business prudence not to raise bills and receive remuneration for the services rendered. Fact remained that when no income was generated for these services rendered. The question of offering any income for the purpose of taxation would not arise. It is stated at the cost of repetition that if the services had been rendered without any fee or charge, the expenses incurred for rendering those services could be disallowed, which was in fact done by the Assessing Officer. However, when it comes to imposition of penalty, it is necessary to show that the assessee had either concealed the income/information or had given inaccurate particulars. When these conditions were not satisfied, the question of imposition of any penalty does not arise.

6. We may also note at this stage that though C.I.T.(Appeal) had set aside the penalty order also on the ground that no satisfaction was recorded by the Assessing Officer while initiating these proceedings, the order of the Income-tax Appellate Tribunal indicates that against this part of the findings of the



C.I.T.(Appeal), no ground was made by the department to challenge this part of the order.

7. We thus hold that no substantial question of law arises and this appeal is dismissed.


A.K. SIKRI
(JUDGE)


REVA KHETRAPAL
(JUDGE)

JULY 30, 2010
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