



* **HIGH COURT OF DELHI : NEW DELHI**

+ **ITA No. 661 of 2010**

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Decided on: June 03, 2010

Commissioner of Income Tax
Delhi-IV
C.R. Building
New Delhi.

..... Petitioner

Through: Mr.Sanjeev Sabharwal, Adv.

Versus

IFCI Limited
61, Nehru Place
New Delhi.

..... Respondent

Through: Ms. Kavita Jha with
Ms.Akansha Aggarwal, Advs.

Coram:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

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



MADAN B. LOKUR, J. (ORAL)

CM No. 7489/2010

This is an application for condonation of delay in re-filing the appeal.

Delay is condoned. The application stands disposed of.

ITA No. 661/2010

The Revenue is aggrieved by an order dated 31st October, 2008 passed by the Income Tax Appellate Tribunal, Delhi Bench 'C' in IT Appeal No. 4507 (Del) of 2007 relevant for the Assessment Year 1998-99.

2. The short question raised by learned counsel for the Revenue is that the Tribunal erred in deleting the penalty imposed by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 (for short the Act).

3. Broadly, the facts of the case are that the Assessee had total dividend income of Rs. 1091.07 lakhs and out of this, an amount of Rs.10.45 lakhs was attributable to dividend received from UTI.

4. There was an amendment in the Finance Act, 1997 whereby sub-section (33) was inserted in Section 10 of the Act by which dividend



income was exempted from income tax. The Assessee was of the view that all dividend income was exempted from income tax. Accordingly the Assessee claimed exemption on the amount of Rs.10.45 lakhs, that is, the dividend received from UTI. However, the dividend paid by the UTI was actually exempted from income tax from the Assessment Year 2000-2001 only and not from the Assessment Year 1998-99, as mistakenly believed by the Assessee.

5. During the assessment proceedings, the Assessee realised its error and immediately agreed that the amount of Rs.10.45 lakhs be excluded from the total dividend income of the Assessee. According to the Assessee, it had made a genuine mistake and its claim for deduction was not mala fide or with any ulterior motive. It was submitted that tax deduction certificates were received by the Assessee from UTI and these were supplied to the Assessing Officer voluntarily. Therefore, there is no question of any concealment of income which was already disclosed in the return but was claimed as exempt inadvertently.

6. The Assessee placed reliance on a decision of the Supreme Court in *Dilip N. Shroff v. Joint Commissioner of Income Tax and another*, [2007] 291 ITR 519 (SC) wherein it was held that any



concealment of income and furnishing of inaccurate particulars must be accompanied by some deliberate act on the part of the Assessee. Mere omission or negligence would not constitute a deliberate act of suppressio veri and suggestio falsi. The Assessing Officer did not accept the explanation given by the Assessee and imposed penalty on the Assessee, as mentioned above.

7. On appeal, the Commissioner of Income Tax (Appeals) [CIT (A)] found the explanation of the Assessee to be bona fide and accordingly directed deletion of the penalty. The view expressed by the CIT (A) was upheld by the Tribunal and that is why the Revenue is in appeal before us under Section 260-A of the Act.

8. Having heard learned counsel for the Appellant, we find that the case of the Assessee is fully covered by the decision of the Supreme Court in *Dilip N. Shroff*. There was no deliberate concealment of income or furnishing of inaccurate particulars by the Assessee. The Assessee had made a genuine mistake in claiming an exemption. The explanation given by the Assessee was that there was some misunderstanding and this was believed not only by the CIT (A) but also by the Tribunal. In view of



this concurrent finding, which we do not find to be perverse, no substantial question of law is made out.

9. The appeal is dismissed.

A handwritten signature in cursive script, appearing to read 'Madan Lokur'.

MADAN B. LOKUR, J

A handwritten signature in cursive script, appearing to read 'Jm'.

CHIEF JUSTICE

JUNE 03, 2010

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