



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA No. 768 of 2010

COMMISSIONER OF INCOME TAX-II ...Appellant
Through Mr.Sanjeev Sabharwal, Adv.

Versus

JAQUAR & CO. LTD. ...Respondent
Through Mr.Salil Aggarwal, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

% **ORDER**
08.07.2010

CM No. 11188/2010 (Condonation of Delay)

This is an application for condonation of delay.

We have heard Mr. Sanjeev Sabharwal, learned counsel for the revenue and Mr. Salil Aggarwal, learned counsel for the assessee on the issue of condonation of delay.

Having heard learned counsel for the parties and upon perusal of the averments made in the application, we find sufficient cause exists for condonation of delay and accordingly it is so ordered.

CM stands disposed of.

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Though this present appeal was listed for admission, yet on consent of learned counsel for the parties it is finally heard.

We have heard Mr. Sanjeev Sabharwal, learned counsel for the appellant and Mr. Salil Aggarwal, learned counsel for the respondent.

In this appeal preferred under Section 260 A of the Income Tax Act, 1961 (for brevity 'the Act') assailing the order dated 29th May, 2009 passed by the Income Tax Appellate Tribunal, Delhi (for short 'the Tribunal') in ITA No. 3470/Del/2005 relating to the assessment year 1994-95, the revenue has raised the following substantial question of law –

“Whether the Income Tax Appellate Tribunal erred in deleting the penalty of Rs.5,75,000/- imposed by Assessing Officer under section 271(1)(c) of the Act?”

Mr. Salil Aggarwal, learned counsel appearing for the assessee has submitted that no substantial question of law arises in this appeal and the whole thing rests on facts.

To appreciate the rival submissions raised at the bar, it is necessary to refer to the facts in brief. The assessee is a company which is engaged in manufacturing bathroom fittings. There was a search at the premises of the assessee. On the basis of the search, an assessment was framed wherein an



addition of Rs.57,85,885/- was made on account of GP estimation of sales amounting to Rs.44.11 lakhs, addition under Section 69 on account of unexplained investment in stock amounting to Rs.12.74 lakhs and an addition on account of disallowance of foreign travelling expenses amounting to Rs.1 lakh. Being grieved by the aforesaid order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) and the first appellate authority allowed the appeal in part whereby an addition of Rs.44.11 lakhs was reduced to a lump sum figure of Rs.10 lakhs with the observation that looking to the quantum of doubtful purchases as well as rate of generation of undisclosed profit an addition of Rs.50 lakhs is considered reasonable which would give a GP rate of more 25.5%. Out of addition of Rs.12.74 lakhs under Section 69, the CIT (A) gave relief and directed the Assessing Officer on certain aspects. Finally, an addition of Rs.3.84 lakhs remained against the assessee which was assailed before the Tribunal. The Tribunal retained the lump sum addition of Rs.10 lakhs but the addition of Rs.3.84 lakhs made under Section 69 was deleted.

After the quantum appeal was disposed of, the Assessing Officer proceeded under Section 271(1)(c) of the Act and levied penalty which was confirmed in appeal by the CIT(A).



Being dissatisfied with the same, the assessee preferred an appeal before the Tribunal questioning the correctness of the order contending that he has offered appropriate explanation before the Assessing Officer and the same is bona fide and, therefore, penalty should not have been imposed. It is also canvassed that the said explanation was substantiated.

The Tribunal adverted to the anatomy of the Explanation (1) to Section 271(1)(c) of the Act and came to hold as follows: -

“In the instant case, assessment was framed, wherein addition of Rs.57.85 lakhs was made on account of GP estimation at 28% of sales, addition u/s 69 amounting to Rs.12.74 lakhs was also made. Foreign travelling expenses of Rs.1 lakh were also disallowed. In the appeal filed, the trading addition was reduced to Rs.10 lakhs. Out of addition of Rs.12.74 lakhs u/s 69, the CIT(A) gave some relief and directed the AO on some other points. Finally, addition of Rs.3.84 lakhs remained against which assessee went in appeal before the ITAT and the ITAT confirmed the addition of Rs.10 lakhs on account of gross profit addition. Thus, we see that as against addition of Rs.57.85 lakhs, Rs.12.74 lakhs and Rs.1 lakh, finally addition of Rs.10 lakhs was retained and that was also on account of estimation of GP rate. We found that during the course of assessment proceedings to substantiate the GP rate disclosed by it, the assessee has given all his explanation with regard to purchases made from various parties, full particulars were furnished merely because some of the suppliers were not traceable, the explanation furnished by assessee cannot be disregarded. Thus, we found that bona fide explanation was given by the assessee for the rate of GP shown in the books of accounts as well as suppliers of the goods, which were not found by the department on subsequent enquiry. Learned AR also relied on various decisions reported at 297 ITR 441, 219 ITR 267, 288 ITR 487 and 276 ITR 351. In case of CIT Vs.



Raj Bans Singh – 276 ITR 351, Hon'ble Allahabad High Court held that estimation of income at a higher figure does not warrant any penal action u/s 271(1)(c). In the instant case, addition on account of gross profit on estimation basis has been retained keeping into view some of the suppliers which could not be traced out subsequently. In view of the fact that assessee has furnished bona fide explanation, as per provisions of Section 271(1)(c), Explanation (1) clause (b), no penalty is leviable.”

On a perusal of the reasoning of the Tribunal, it is clear as crystal that the assessee had given apt explanation with regard to purchases and the Tribunal has accepted that the explanation proffered is bona fide. On a scrutiny of the same, it can safely be stated that it is a finding of fact recorded by the Tribunal and it is not to be disturbed by this court in appeal under Section 260 A of the Act.

In view of the aforesaid analysis, we find the question raised by the revenue does not remotely anyway suggest any substantial question of law and accordingly the appeal, being devoid of merit, stands dismissed without any order as to costs.


CHIEF JUSTICE


MANMOHAN, J

JULY 08, 2010
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