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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 801/2010

COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Advocate.

versus

NIKKITA LEASING & FINANCE LTD Respondent
Through: None.

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

ORDER
12.07.2010

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Questioning the correctness of the order dated 30th June, 2009 passed by the Income Tax Appellate Tribunal (in short, "the tribunal") in ITA No.3260/Del/2008 pertaining to assessment year 1998-1999 whereby the tribunal declined to concur with the order passed by CIT(A) whereby the appellate authority had affirmed the order passed by the assessee wherein penalty under Section 271(1)(c) of the Income Tax Act, 1961 (for brevity, "the Act") was imposed.



The only submission raised by Ms. Prem Lata Bansal, learned counsel for revenue that though the entire facts were available before the tribunal, there was no necessity to direct a remit.

If the present factual matrix is scanned, it is clearly vivid that the notice issued by the Assessing Officer was not served on the assessee whereby it was deprived of to avail the opportunity to explain. In this connection, we may refer to paragraph 5 of the order of the tribunal wherein it had been held as follows:-

“5. We have considered the rival contentions, carefully gone through the orders of the authorities below and found from the record that there was a genuine business loss in its concern M/s. Nikita Castings. Due to closure of business, there was no activity and the assessee had to pay interest on the various loans taken for the purpose of business. In the quantum proceedings due to closure of business, the same was disallowed. Similarly, loss claimed on forfeiture of shares was also disallowed. From the pleadings before the CIT(A), we found that assessee has not been afforded a reasonable opportunity by the DCIT while imposing penalty u/s 271(1)(c). As the explanation given by the assessee for not filing return against the quantum proceedings due to heavy carried forward losses and even which could not be set off against any income, goes to the root of the issue, in the interest of justice and fairplay, we restore the appeal to the file of the AO for deciding the same afresh after considering the submissions filed by the assessee with regard to carry forward losses



since 1998-1999 to 2006-2007, which could not be taken any benefit by the assessee. We direct accordingly.

In view of the aforesaid, we do not perceive any error in the order of the tribunal and definitely it does not give rise to any substantial question of law for determination. Resultantly, the appeal, being devoid of merits, is dismissed *in limine*.


CHIEF JUSTICE


MANMOHAN, J

JULY 12, 2010

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