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

+ ITA 1318/2010

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

versus

FRACHT FORWARDING &
TRAVEL (P) LTD.. Respondent
Through: None

% Date of Decision: 09th September, 2010

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

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

MANMOHAN, J:

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as “Act”) challenging the order dated 04th June, 2009 passed by the Income Tax Appellate Tribunal (in short “Tribunal”) in ITA No. 1591/Del/2009 for the Assessment Year 2001-2002.

2. It is pertinent to mention that in the present case the Tribunal has deleted the penalty imposed by the Assessing Officer (in short, “AO”) under Section 271(1)(c) of the Act. So far as the penalty with respect to provision for doubtful debts was concerned, the Tribunal observed that not only the explanation furnished by the respondent-assessee was



bonafide but also the said finding recorded by the Commissioner

Income Tax (Appeals) [in short, “CIT(A)"] had not been controverted by the Revenue. With regard to loss on sale of assets, the Tribunal observed that the assessee had duly reduced the sale proceeds from the gross block of assets for computing depreciation. According to the Tribunal, the respondent-assessee had committed a bonafide mistake in not adding it back while computing the taxable income. The Tribunal further held that the mistake was so apparent that the AO had not carried out any detailed investigation to find out the same. Accordingly, the Tribunal held that the explanation offered by the respondent-assessee was bonafide and genuine.

3. Mr. N.P. Sahni, learned counsel for the Revenue submitted that the Tribunal had erred in law in deleting the penalty imposed by the AO under Section 271(1)(c) of the Act. Mr. Sahni also submitted that the Tribunal had erred in accepting the explanation offered by the respondent-assessee as bonafide. In this connection, Mr. Sahni relied upon a judgment of Supreme Court in ***Union of India Vs. Dharamendra Textiles Processors, (2008) 13, SCC 369.***

4. In our opinion, the decision in ***Dharamendra Textile Processors*** (supra) must be understood to mean that applicability of Section 271(1)(c) would depend upon the existence or otherwise of the conditions expressly stated in the said Section and once the said Section was applicable, the authority concerned would have no discretion in



imposing penalty. Consequently, if the assessee is able to bring its c
within Explanation 1 to Section 271, then no penalty can be levied on
it.

5. In the present case, it is apparent that because of pendency of
legal proceedings being initiated against the debtors, the respondent-
assessee had not actually written off its debts in the books of account.
We are also in agreement with the Tribunal that the explanation
furnished by the respondent-assessee in the present case is bonafide and
as the said finding had not been controverted by the DR before the
Tribunal, we are of the opinion that the Tribunal could not have reached
any other conclusion. Consequently, the present appeal being devoid
of merit is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 09, 2010

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