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% 19.10.2011

Present: Mr. Abhishek Maratha, Sr. Standing Counsel with Ms. Anshul Sharma, Advocate for the appellant.

+ **ITA No.1173/2011**

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The present appeal under Section 260A of the Income Tax Act, 1961 has been preferred by the Revenue against the order dated 29.4.2011 dismissing their appeal ITA No.900/Del/2010 for the assessment year 2004-05.

2. The assessing officer vide order dated 27.5.2009 had imposed penalty of Rs. 1,73,63,654/- under Section 271(1)(c) of the Act on two grounds: (i) the assessee had wrongly claimed depreciation to the extent of Rs.3,15,97,100/- in the return of income and (ii) the assessee has wrongly computed deduction under Section 80HHC to the extent of Rs.1,32,03,329/-.

3. On the second aspect, the CIT (Appeals) and the ITAT have held that the method and manner of computation of deduction under Section 80HHC had been ^{a r.} matter of substantial legal debate and even conflicting _h decisions. The assessee had ^{r.} followed and relied upon the decisions in his favour. These decisions have been referred to by the CIT (Appeals) in his



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order. Subsequently, the Supreme Court settled the issue/debate in favour of the Revenue in their decision in **CIT vs. IPCA Laboratories, [(2004) 266 ITR 521 (SC)]**. The respondent had filed an application in form of the letter dated 15.12.2006 before the assessing officer and re-computed the deduction in terms of and in accord with the Supreme Court's decision. In our opinion, the CIT (Appeals) and the ITAT have rightly held that there was no justification and reason to impose penalty for concealment of income on this ground. The explanation given by the assessee ^{was} ~~is~~ justified and merited acceptance.

4. This brings us to the first ground. The assessee is engaged in the business of manufacturing of toughened glass, laminated and float glass etc. During the financial year 2002-03 another company M/s Float Glass India Ltd. was amalgamated with the respondent/assessee with effect from 1.4.2002. Thereafter, the float glass unit/factory which initially belong to Float Glass India Ltd. became a unit/division of the respondent/assessee. In the return of income filed by the respondent/assessee, depreciation was claimed in respect of assets of the float glass division on the basis of written down value (WDV) as on 1.4.2003 on the figures available in the records and as per the books of Float Glass India Ltd. Subsequently, in the case of Float Glass India Ltd. a rectification order under Section 154 was passed on 3.10.2006. This resulted in reduction of the WDV of the

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capital assets of Float Glass India Ltd. After the rectification order passed in the case of Float Glass India Ltd. on 3.10.2006, the respondent/assessee suo moto on its own intimated the assessing officer about reduction in the WDV and reduced the claim for depreciation rectifying the WDV of capital assets of the float glass division. The explanation merits acceptance and justifies the impugned order cancelling the penalty.

5. Learned counsel for the appellant has drawn our attention to paragraph 12 of the order passed by the Tribunal dated 29.4.2011 and submits that onus was wrongly placed on the Revenue. Even if there is merit in the contention of the learned counsel for the appellant, the said aspect need not be examined in the present case as on the facts and circumstances of the present case we are not inclined to interfere with the order passed by the Tribunal.

6. The appeal is accordingly dismissed in limine.


SANJIV KHANNA, J.


R.V. EASWAR, J.

OCTOBER 19, 2011

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