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Present: Ms. Prem Lata Bansal, Sr. Standing Counsel for the appellant/Revenue.

+ CM APPL. 15144/2010

For the reasons stated in the application, the delay in refilling the appeal is condoned.

The application stands disposed of.

ITA 1256/2010

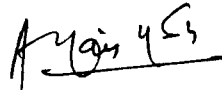
The respondent assessee had filed its return for the assessment year 2001-02 declaring 'Nil' income. It had claimed deduction under Section 80 IB of the Income-Tax Act (hereinafter referred to as the 'Act') as well as under Section 80 HHC of the said Act. The Assessing Officer noticed that while computing the deduction under Section 80 IB of the Act, the assessee had also included the loss of duty drawback, DEPB as well as interest on FDRs. Likewise, deduction under Section 80HHC was claimed on interest on FDRs and interest on Income Tax refund. The Assessing Officer disallowed the deduction claimed on the aforesaid components on the ground that the income thereof was not derived from export business and, therefore, deduction could not be claimed thereupon. At the same time, the Assessing Officer also initiated penalty proceedings under Section 271 (1) (c) of the Act and imposed the penalty of Rs. 13,83,674/-. The CIT (A) confirmed this penalty. The Income Tax Tribunal has, however, deleted the penalty imposed by the Assessing Officer on the ground that the issues




regarding computation of deduction under the aforesaid provisions were arguable and controversial/debatable.

No doubt, the judgment in the case of **Commissioner of Income Tax Vs. Sterling Foods**, 237 ITR 579 laid down the principle of law but the applicability of this principle in given circumstances had thrown some debate. There were pronouncements giving benefit of deduction on duty drawback, DEPB etc. It is because of this reason that the Tribunal has observed that the assessee had claimed full deduction in various judicial pronouncements and in any event, it could not be treated as a case where the assessee had made any concealment of particulars of income or had furnished inaccurate particulars.

We are of the opinion that the Tribunal has rightly deleted the penalty on the aforesaid ground. No question of law arises. This appeal is accordingly dismissed.


A.K. SIKRI, J.


M.L. MEHTA, J.

JANUARY 17, 2011

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