



% 11.05.2011

Present: Ms. P.L. Bansal, Sr. Adv. with Mr. Deepak Anand, counsel for the appellant.
Mr. M.P. Rastogi, counsel for the respondent.

+ ITA No. 541/2010

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This appeal was admitted on the following substantial question of law:-

"Whether the ITAT is justified in deleting the penalty of ₹11,21,267/- levied under Section 271(1)(c) as imposed by Assessing Officer and confirmed by CIT (A)".

Penalty proceedings were initiated against the respondent herein by the Assessing Officer after making additions on the following pleas;

1. The assessee had made the payment of royalty amounting to ₹16,64,000/-, which was disallowed by the Assessing Officer on the ground that it had failed to deduct the tax at source from the said payment and, therefore, such payment did not qualify for deduction having regard to provisions of Section 40(a)(i) of the Income Tax Act.

In fact, the total royalty paid by the assessee was to the tune of ₹79,20,786/-, out of which the payment of royalty to the extent of ₹16,64,000 was disallowed in the re-assessment proceedings and the remaining payment of royalty was disallowed in the original proceedings itself on the same ground. However, no penalty proceedings were initiated at that time. It was only when the re-assessment order was passed disallowing the aforesaid royalty to the



tune of ₹16,64,000/-, the penalty proceedings were initiated and imposed on this ground.

The Tribunal while deleting penalty on this ground has stated that there was no dispute that royalty payment was, in fact, made by the assessee and the only reason for disallowing the deduction was that it had failed to deduct the tax at source in the relevant financial year. It is also noted by the Tribunal that the tax was, in fact, deducted in the next financial year.

In these circumstances, we agree with the conclusion of the ITAT that it was a *bona fide* explanation furnished by the assessee.

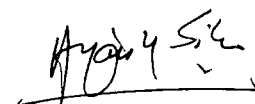
2. Another item was the interest paid to the tune of ₹12,14,970/- by the assessee to the Sale Tax Department on account of deferment of sale tax. The assessee did not challenge the said disallowance by preferring any appeal. However, the ITAT has deleted the penalty keeping in view the judgment of the Supreme Court in the case of ***Lachmandas Mathuradas vs. CIT reported in (2002) 254 ITR 799***, wherein the Supreme Court has held that interest on arrears of sale tax or on the outstanding balance of sale tax is not penal in nature, but it is compensatory in nature. The assessee had claimed this deduction, which was disallowed on the ground that it was penal in nature. The penalty imposed on that basis is again rightly set aside by the Tribunal. It follows therefrom that had the assessee challenged the disallowance by filing an appeal before the CIT(A), it might have



even succeeded. Be that as it may, it again shows the claim made was *bona fide* and, therefore, the penalty could not have been imposed on that basis.

3. The third addition made by the Assessing Officer, in the quantum proceedings, was on account of additional sale tax amounting to ₹3,24,650/-. The assessee was called upon to pay this additional sale tax for the reason that it had accounted sales exclusive of excise duty or sale tax. It is again not in dispute that this additional sale tax was, in fact, paid by the assessee and on that basis, deduction claim was disallowed on the ground that it was a faulty approach on the part of the assessee in accounting the sales exclusive of excise duty or sale tax. May be because of this reason, the claim of the assessee for this additional sale tax was not allowed. At the same time, it cannot be a ground for imposition of penalty.

We, thus, do not find any error in the order passed by the Tribunal. The question of law as framed gives answer in the affirmative, that is, in favour of the assessee and against the Revenue. As a result of which, this appeal is dismissed.


A.K. SIKRI, J.


M.L. MEHTA, J.

MAY 11, 2011

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