

**COMMON ORDER - 23 and 24 #****% 29.04.2011**

Present: Ms. Rashmi Chopra, Advocate for the appellant.
Mr. M.K. Aurora, Advocate for the respondent.

+ ITA No. 1983/2010
ITA No.1921/2010

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1. In the income tax returns filed by the assessee for the assessment year 2001-02, the assessee had claimed certain installation expenses and bad debts by debiting the same to the Profit and Loss Account. These expenses and bad debts were disallowed by the Assessing Officer. While framing the assessment order, the Assessing Officer also proceeded to initiate penalty proceedings under Section 271(1)(C) of the Income Tax Act. A show cause notice was given and, thereafter, penalty in the sum of Rs.20 lakhs was imposed upon the assessee.

2. The assessee challenged the assessment order before the CIT(A) who confirmed the disallowance on both the counts and dismissed the appeal of the assessee. By separate order, appeal of the assessee against penalty proceedings was also dismissed. It is under these circumstances the assessee filed two appeals,



one quantum appeal against the assessment order and other against the order of the penalty upheld by the CIT(A) before the ITAT. Both these appeals have been decided by a common order dated 26th November, 2009.

3. Insofar as, the appeal of the assessee in quantum proceedings is concerned, order of the Tribunal reveals that various grounds were taken by the assessee on merits, challenging the orders of the Assessing Officer and CIT(A). In addition it was also argued by the assessee that the authorities below had not considered various statements made by the assessee despite elaborate written submissions having been filed. The assessee has also made alternate plea for restoring the case back to the Assessing Officer to decide the same afresh after giving the assessee adequate opportunity of being heard. On this alternate plea the Departmental Representative of the revenue conceded stating that he had no objection for setting aside the orders. Because of this statement made by the Departmental Representative the Tribunal did not go into the merits of the issue, though detailed arguments were advanced on that aspect as well, as noted above. Instead the Tribunal has remanded the case back to the Assessing Officer to decide the case afresh after giving assessee adequate opportunity of being heard. Since the quantum



assessment has been set aside, as a consequence, the penalty imposed upon the assessee has also been deleted by the Tribunal. It is because of this reason that two appeals are filed, one against the order of the Tribunal in quantum proceedings and other in the penalty proceedings.

4. As noted above, the assessee had made his submission on merits of the case, namely, challenging the two additions made by the Assessing Officer and also raised alternate plea to hear the matter afresh after giving him opportunity. Further, as also noted above, the Representative of the Department had agreed to this alternate course of action and because of this statement of the Representative of the Department, the Tribunal passed the impugned order accepting the alternate plea of the assessee.
5. Under these circumstances, we fail to understand as to how the Revenue could feel prejudiced in such an order and prefer this appeal. We find from the grounds of the appeal that a specific ground is taken that ITAT² as committed an error in recording that the Revenue was agreeable to remit the matter to the Assessing Officer. In that way, the proper course of action was to file a proper application before the Tribunal and instead of doing so, the present appeal is preferred, which is totally misconceived.



The matter is compounded further by filing affidavit in support of this appeal. This affidavit is filed by one Mr.S.G. Joshi, Commissioner of Income Tax – III at Central Revenue Building, New Delhi, affirming the contents of the appeal. He was not the person who had appeared in the proceedings before the Tribunal. Thus he was not the right person to affirm regarding the proceedings which took place before the Tribunal. In such circumstances, he could not be a proper person who can file such an affidavit as he had no personal knowledge as to whether the Departmental Representative has made such a statement or there was an error in the order passed by the Tribunal. It is interesting to note that in the affidavit he states that “the facts stated therein are true and correct to my knowledge”. As per ***State of Maharashtra v. Ramdas Shrinivas Nayak and Anr.*** AIR 1982 SC 1249 Law is settled, namely, this Court has to go by the observations made by the judicial/quasi judicial authority recorded in the order.

6. It is stated at the cost of repetition that even if the Revenue was of the opinion that there was an error in the order of the ITAT, proper court[✓] was to move an application before the ITAT.



7. For all these reasons, we dismiss these appeals with cost quantifying to Rs.25,000/- to be paid to Delhi High Court Legal Services Committee.


A.K. SIKRI, J.


M.L. MEHTA, J.

APRIL 29, 2011

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