



13, 14 & 15

% 21.07.2011

Present: Mr. N.P. Sahni, Sr. Standing Counsel with Mr. Ruchesh Sinha, Advocate for the appellant/Revenue.
Mr. B.Y. Kulkarni, Advocate for the respondent.

(Common Orders)

+ITA No.1649/2010

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This appeal relates to the Assessment Year 2004-05. While completing the quantum proceedings and passing assessment order, the Assessing Officer disallowed the expenses of ₹8,04,19,264/- in respect of foreign remittances on which no TDS was made as required under Section 195 of the Income Tax Act (hereinafter referred to as 'the Act'). On this basis, penalty proceedings were also initiated and penalty imposed under Section 271(1)(c) of the Act.

The assessee had filed appeal against the assessment order in quantum proceedings which was partly allowed by the CIT (A), who upheld the additions to the extent of ₹56,29,348/- as against ₹8,04,19,264/- made by the AO. CIT (A) in the process also held that there was profit element of 7% embedded in the foreign remittances on which TDS was liable to be deducted under Section 195 (1) read with Section 40(a)(i) of the Act.

Both the assessee as well as Revenue challenged the order of the AO before the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'). The Tribunal passed the order dated 30.11.2009 remitting the case back to the AO for fresh examination



and reassessment. Since quantum proceedings were referred back to the AO, in the instant case, on this basis, penalty has also been deleted.

In view of the above, no fault can be found with the approach of the Tribunal in deleting the penalty when the matter is to be examined afresh by the AO and earlier orders passed by the AO as well as CIT (A) have been set aside. However, it goes without saying that if, after fresh examination of the matter, the AO makes certain disallowance in the expenses, it would be open to the AO to also take a view as to whether in the facts and circumstances in which the said disallowances would be made, the penalty proceedings are to be initiated or not.

With these observations, this appeal is otherwise dismissed.

ITA No.1647/2010

ITA No.1648/2010

These appeals relate to the Assessment Year 2003-04 and the foreign remittances were disallowed on the same ground, viz., non-deduction of tax at source required under Section 195 of the Act.

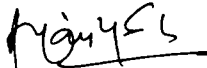
Here also, the CIT (A) had partly allowed the appeal against which the Revenue had preferred the appeal. Appeal of the Revenue has, however, been dismissed by the Tribunal vide orders dated 16.12.2009. Limited grievance of the Department, challenging the aforesaid orders in the present appeals is that whereas hardly a fortnight ago vide orders dated 30.11.2009, the Tribunal while deciding



the appeal in respect of 2001-02 and 2004-05 had remitted the case back to the AO, the appeal relating to this year also involving identical issue should have been dealt with in the same manner and therefore, instead of dismissing the appeal of the Revenue, the Tribunal should have remitted the case back to the AO for fresh adjudication.

We find force in this plea of the learned counsel for the appellant appearing for the Department. The order dated 16.12.2009 is modified to the extent that in respect of this assessment year also, the matter is remitted back to the AO for fresh adjudication in the light of the observations of the Tribunal made in orders dated 30.11.2009 in respect of Assessment Years 2001-02 and 2004-05. Other appeal i.e. ITA No.1648/2010 relates to penalty imposed in respect of this year which shall be governed by the orders passed in respect of ITA No.1647/2010.

All these three appeals stand disposed of.


A.K. SIKRI, J.


M.L. MEHTA, J.

JULY 21, 2011

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