



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 476/2009**

%

Date of decision: 29th November, 2011.

COMMISSIONER OF INCOME TAX Appellant

Through: Mr.Sanjeev Sabharwal, Sr.Standing
Counsel.

versus

DOON VALLEY RICE LTD Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest?

SANJIV KHANNA, J.:

1. Vide order dated 21.01.2010 the following substantial question of law was framed:-

“Whether the Income Tax Appellate Tribunal, after holding that the Commissioner of Income Tax (Appeals) had erred in deleting the penalty under Section 271(1)(c) of the Income Tax Act, 1961, could have given further direction restoring the matter to the file of the Assessing Officer for deciding the issue afresh and directing the assessee to furnish full details of the travelling expenses?”

2. The respondent-assessee had filed return declaring loss of Rs. 9,81,50,987/- on 27.11.2003 for the assessment year 2003-04.
3. The Assessing Officer vide order dated 30.03.2006 computed the total income of the assessee at a loss of Rs. 9,33,25,287/-. The Assessing Officer held



that the respondent was engaged in the business of manufacturing, trading and export of rice and had shown negative GP rate as compared to the Assessment Year 2001-02. A questionnaire was issued to the assessee why GP rate should not be enhanced as a similar addition was made in the earlier years. There was no response of the assessee and, therefore, the Assessing Officer applied the GP rate of 4.5%. We need not examine the effect of this addition and no question of law has been framed on this aspect. The question of law, as noticed above, has been framed on the addition of Rs. 11,48,881/-, claimed as an expense on account of foreign travel. During the course of quantum assessment proceedings, the assessee had filed a copy of the ledger account of foreign travel but the Assessing Officer made the said addition holding that the assessee had failed to furnish justification as to why the trips were undertaken for business purposes. The Assessing Officer also noticed that in one of the foreign trips one of the directors was even accompanied by his wife.

4. Penalty proceedings under Section 271(1)(c) were initiated separately and penalty of Rs. 16,88,029/- was imposed by the Assessing Officer on the two counts i.e., low GP rate and foreign travel. It was held that the respondent-asseessee had concealed particulars of income on account of expenditure on foreign travel.

5. The CIT(A) deleted the penalty on both counts. He held that the addition made on lower GP rate was without any firm substance and material to show that



the account books were unreliable or had false entries. It was also pointed out that in the quantum assessment proceedings, the assessee was unable to reply to the communications because of lack of time and failure to provide adequate opportunity. The CIT(A) held that the failure to justify foreign tour by the directors or the employees cannot be equated with furnishing of inaccurate particulars of income and/or the concealment of income.

6. On the appeal filed by the Revenue, the Income Tax Appellate Tribunal in respect of the foreign tour expenses has directed as under:-

“....So far as disallowance of traveling expenses of Rs. 11.48 lac is concerned, the AO has asked the assessee to submit supporting details/the documents to prove that expenditure was incurred for purpose of business, due to absence of the assessee before the AO no such details could be furnished. Therefore AO imposed the penalty with reference to the disallowance of traveling expenses. The CIT(A) has deleted the penalty by observing that failure to file justification of conducting the foreign tour by the Directors and/or the employees of the assessee company cannot be equated with the furnishing of inaccurate particulars of income &/or the concealment of income. We do not find any merit in the action of the CIT(A), in so far as the assessee could not furnish the details of the traveling expenses so incurred and also the traveling expenses have been incurred by the wife of the Director Shri R.G. Gupta there was no justification for deleting the penalty imposed. Accordingly we set aside this part of CIT(A)'s order and matter is restored back to the file of AO for deciding the issue afresh and the assessee is also directed to furnish full details of foreign traveling expenses alongwith justification for incurring of such expenses by the wife of Director of the company who had undertaken foreign tour with him before the AO. We direct accordingly.

4. In the CO the assessee has basically aggrieved for not giving the reasonably opportunity by the AO before deciding the imposition of penalty u/s 271(1)(c) the other grounds taken by the assessee are in support of CIT(A)'s order for deleting the penalty. As we have already confirmed the action of the CIT(A) with



reference to deletion of penalty on account of GP addition, and has

set aside the order of CIT(A) in respect of penalty levied for disallowance of traveling expenses, the CO is allowed in part.”

7. It is clear from the said reasoning that one of the grievances which had appealed to the Tribunal was that the assessee was not granted sufficient and adequate opportunity to establish their claim with regard to the foreign travel expenses i.e. whether the said expense is allowable under Section 37 of the Act? Therefore, the Tribunal, while setting aside the order of the CIT(A) on the question of foreign travel expenses, had remitted the matter to the Assessing Officer be decided afresh with liberty to the assessee to furnish full details of the foreign travel expenses alongwith justification for incurring of the said expenses including the foreign travel of the wife of the director.

8. In view of the aforesaid, we do not see any reason to interfere with the order of the Tribunal. The appeal is dismissed. The question framed above is discharged. No costs.

SANJIV KHANNA, J.

R.V.EASWAR, J.

NOVEMBER 29, 2011
mb