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

+ ITA 630/2012

COMMISSIONER OF INCOME TAX-III

..... Appellant

Through : Sh. Sanjeev Rajpal, Sr. Standing
Counsel.

versus

RAJAT LAL

..... Respondent

Through : Sh. Vaibhav Kulkarni, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

05.11.2012

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This appeal by the Revenue challenges an order of the Income Tax Appellate Tribunal (ITAT) dated 17.02.2012 in ITA 1179/Del/2006 for the assessment year 1997-98. The impugned order had rejected the Revenue's appeal, questioning the deletion of the penalty imposed by the AO under Section 271(1)(c) of the Income Tax Act, in the circumstances of this case. The assessee in his return declared an income of Rs.39,18,664. The AO directed addition of certain amount as capital gains after returning a finding that the assessee had sold certain shares during the relevant accounting year. While doing so, the assessee's contention that the shares were sold during a subsequent period because the consideration was fully realized at that point of time, was rejected. The assessee's appeal was allowed by the CIT (A) but the ITAT, on Revenue's appeal, returned the addition of the capital gains. In an appeal to the Allahabad High Court by the assessee under Section 260A of the Income Tax Act, being ITA 6/2005, that High Court considered the question of law for this assessment year 1997-98 and accepted the assessee's contentions. A copy of the said judgment has been shown to the Court. The following questions of law were considered by the High Court:

"A. Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that capital gains on transfer of shares



were liable to tax during the previous year relevant to assessment year 1997-98?

B. Whether the Tribunal was legally correct in holding that the capital gains was assessable in the assessment year 1997-98 even when there was no transfer of shares as provided for and contemplated under the Companies Act?

C. Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that the agreement was one for transfer of immovable property.

D. Whether the Tribunal misinterpreted the deed of agreement dated 19.08.1996 and erroneously took the view that the proprietary right in the shares vested in the buyer on the payment of the first instalment. The Tribunal failed to take into consideration that no transfer deed transferring the certificate was ever issued by the appellant in the relevant assessment year 1997-98 nor was he recorded as a shareholder in the records of the company?

E. Whether on the facts and in the circumstances of the case, the Tribunal erred in law in taking into account irrelevant material and ignoring essential material and evidences on record?

F. Whether on the facts and in the circumstances of the case, the conclusion arrived at by the Tribunal is perverse in as much as no reasonable person correctly informed of the position in law would come to?"

In para 29 of the said judgment, the Tribunal's ruling was set-aside and the High Court consequently answered the questions of law in favor of the assessee. Having regard to these circumstances, which apparently took place after the filing of the present appeal, this Court is of the opinion that the Revenue's appeal cannot be accepted. Another feature which this Court has taken into account is that the findings of the CIT(A) and the Tribunal in the present penalty are concurrent and against the Revenue. The appeal is therefore, rejected.


S. RAVINDRA BHAT, J


R.V.EASWAR, J

NOVEMBER 05, 2012
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