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

+ ITA 642/2012

CIT Appellant

Through : Sh. N.P. Sahni, Sr. Standing Counsel.

Versus

FLEX SECURITIES LTD Respondent

Through : Nemo.

CORAM:**HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V.EASWAR****ORDER**
21.11.2012

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The Revenue claims to be aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) dated 12.07.2011 in ITA 4078/Del/2010. The question of law sought to be urged is:

"Whether the Tribunal fell into error in upholding the setting-aside of the penalty proceedings and the penalty imposed upon the assessee, in the facts and circumstances of the case?"

The assessee, an investment company, had in its return for the Assessment Year 1998-99 claimed deduction for interest under Section 36(1)(iii) of the Income Tax Act. The Assessing Officer scrutinized the return and disallowed interest of Rs.1,77,05,388/- under that provision for having utilized it for the purpose of investment in shares and securities. A further sum of Rs.24,16,860/- was disallowed on the ground that it was attributable to dividend income which was exempt. The assessee succeeded before the Commissioner of Appeals; however, the matter was finally settled in favor of the Revenue, at its instance, by the ITAT. The AO had, in the meanwhile, initiated penalty proceedings which culminated in an order imposing penalty for concealment of income. The CIT (Appeal)'s order, setting-aside the penalty, was upheld by the Tribunal, in its



impugned order.

Learned counsel for the Revenue urges that the Tribunal fell into error in mechanically following the ruling in *CIT v. Reliance Petroproducts (P) Ltd.* 322 ITR 158 (SC). Learned counsel emphasized that out of the total income declared in the return and related documents, the revenue generated from the sale of shares constituted less than 2%. It was also submitted that having regard to the provision of Section 36(1)(iii), making of the claim itself by the assessee, in the circumstances, amounted to furnishing of inaccurate particulars, which attracted penal proceedings.

This Court has considered the submission. The Tribunal, by upholding the concurring order of the appellate commissioner (setting-aside the penalty imposed) had found as follows:

"5. We have heard the rival contentions in the light of material produced on record and precedents relied upon. In the case the assessee has borrowed Rs.10,89,87,367/- and paid interest Rs.2,41,02,166/-. Interest was claimed as exempt expenditure u/s 36(1)(iii) of the Act. AO while scrutinizing the case disallowed interest of Rs.2,01,22,248/- u/s 36(1)(iii) of the Act having utilized for the purpose of making investment in exempt income. AO observed that assessee has concealed the particulars of income/furnished inaccurate particulars of income to the extent of Rs.2,01,22,248/-. Ld. CIT(A) however referred to the decision of Hon'ble Apex Court in the case of Reliance Petro Products P. Ltd. He held that there is no furnishing of inaccurate particulars or concealment in such a situation he held that there would no question of imposing penalty u/s 27(1)(c) of the Act. A mere making of claim which is not sustainable in law by itself can not amount to furnishing of inaccurate particulars regarding income of the assessee. CIT(A) further noted that assessee had furnished all details of expenditure and income. Accordingly merely because assessee has claimed expenditure which is not exempt can not lead to levy of penalty u/s 27(1)(c) of the Act.

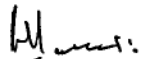
6. Further it is observed that Section 14A which mandates disallowances of expenditure in relation to income not included in total income was introduced by the Finance Act, 2001 with retrospective effect from 1.4.1962. Thus it is clear that S. 14A was not in statute books when the assessee has filed his return of income. ITAT while sustaining the disallowance on merits in this case has also referred to S.14A in this case. This further fortifies assessee's claim that there was no concealment or furnishing of inaccurate particulars of income in this case."



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In view of the concurrent findings and having regard to the circumstances, especially the proviso to Section 14A introduced in the statute book after the relevant period, and providing that no disallowance would be made in an assessment for an assessment year prior to the assessment year 2001-02, this Court is of the opinion that the no substantial question of law arises. The appeal is accordingly dismissed.


S. RAVINDRA BHAT, J


R.V.EASWAR, J

NOVEMBER 21, 2012
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