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

+ ITA 1404/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through Mr. Sanjeev Sabharwal, Senior
Standing Counsel.

versus

INSILCO LTD. Respondent
Through Mr. V.P. Gupta, Advocate

% Date of Decision: 17th September, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

MANMOHAN, J:

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") challenging the order dated 10th July, 2009 passed by the Income Tax Appellate Tribunal (for brevity "Tribunal") in ITA No. 2811/Del/2008 for the Assessment Year 1998-99.

2. Mr. Sanjeev Sabharwal, learned senior standing counsel for the Revenue submitted that the Tribunal had erred in law in deleting the penalty of ₹ 5,98,899/- levied by the Assessing Officer under Section 271(1)(c) of Act, 1961.

3. However, upon a perusal of the file we find that the said penalty was deleted both by the Commissioner of Income Tax (Appeals) and



the Tribunal on the ground that the issue involved in the quantum proceeding was a debatable one and further that the respondent-assessee had neither concealed the particulars of income nor furnished inaccurate particulars of income. In fact, the Tribunal in its impugned order has observed as under :-

“7. Agreeing with the reasoning given by the CIT(A) while cancelling the impugned penalty amount we would like to further add that it is a case involving a legal issue on which there could possibly be two opinions, first, the one followed by the AO and the second given by the CIT(A) while reversing the order of the AO and the third taken in the order of ITAT upholding the order of the AO on the reasoning that in view of the amendment in the provision of section 115JA with retrospective effect the set off of unabsorbed depreciation while determining the book profit u/s 115JA of the Act was held not allowance to the assessee. From the facts it cannot be said that the assessee either concealed the particulars of income or furnished inaccurate particulars of income by harbouring the belief that it was entitled to claim the same.

8. For the reasons given hereinabove we are of the considered opinion that the CIT(A) has rightly cancelled the impugned penalty amount of Rs. 598899/- levied u/s 271(1)(c). Accordingly, the order of the CIT(A) in this regard is upheld and the ground of appeal taken by the revenue is rejected.”

4. Since the approach of the Tribunal is fair, reasonable and in consonance with law, the impugned order calls for no interference. Accordingly, the present appeal is dismissed in limine but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 17, 2010/rn