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

\+ ITA 1460/2010

THE COMMISSIONER OF INCOME TAX ..... Appellant
Through: Ms. Sonia Mathur, Advocate

versus

MEDSAVE HEALTHCARE LIMITED ..... Respondent
Through: None

% Date of Decision: 27th 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?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

MANMOHAN, J

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity "Act") challenging the order dated 25th September, 2009 passed by the Income Tax Appellate Tribunal (in short "Tribunal") in ITA No. 503/Del/2009, for the Assessment Year 2003-2004.

2. Ms. Sonia Mathur, learned counsel for the revenue submitted that the Tribunal had erred in law in dismissing the revenue's appeal whereby the penalty under Section 271(1)(c) of the Act amounting to ₹32,58,703/- imposed by the Assessing Officer (in short, "AO") had been deleted. Ms. Mathur further relied upon a judgment of the

Supreme Court in ***Union of India and Ors. Vs. Dharamendra Tex Processors and Ors. (2008) 13 SCC 369***.

3. In fact, Section 271(1)(c) came to be interpreted by the Apex Court in ***Union of India & Ors. vs. Dharamendra Textile Processors & Ors. (2008) 306 ITR 277 (SC)***. The three Judge Bench of the Apex Court over-ruled the decision in ***Dilip N. Shroff vs. Joint CIT (2007) 291 ITR 519 (SC)*** and approved the decision in ***Chairman, SEBI vs. Shriram Mutual Fund and Anr. (2006) 5SCC 361***. In the said case, the Supreme Court held:-

> *"27. The Explanations appended to section 272(1)(c) of the Income-tax Act entirely indicate the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing the return. The judgment in Dilip N. Shroff's case [2007] 8 Scale 304 (SC) has not considered the effect and relevance of Section 276C of the Income-tax Act. The object behind the enactment of section 271(1)(c) read with the Explanations indicates that the said section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability as is the case in the matter of prosecution under Section 276C of the Income-tax Act."*

4. The aforesaid decision was taken note of in ***Commissioner of Income Tax vs. Reliance Petroproducts Pvt. Ltd.(2010) 322 ITR 158 (SC)***. While considering the phrase 'concealment of particulars', the Apex Court referred to Section 271 and held as follows:-

> *"9.Therefore, it is obvious that it must be shown that the conditions under Section 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. In Dilip N. Shroff v.*

Joint CIT [2007] 6 SCC 329, thisCourt explained the terms "concealment of income" and "furnishing inaccurate particulars". The Court went on to hold therein that in order to attract the penalty under Section 271(1)(c), mens rea was necessary, as according to the Court, the word "inaccurate" signified a deliberate act or omission on behalf of the assessee. It went on to hold that clause (iii) of section 271(1)(c) provided for a discretionary jurisdiction upon the assessing authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held that the Assessing Officer must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in Dilip N. Shroff v. Joint CIT was upset. In Union of India v. Dharamendra Textile Processors, after quoting from section 271 extensively and also considering section 271(1)(c),the Court came to the conclusion that since Section 271(1)(c) indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing return, there was no necessity of mens rea. The court went on to hold that the objective behind the enactment of Section 271(1)(c) read with Explanations indicated with the said section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, willful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under Section 276C of the Act. The basic reason why decision in Dilip N. Shroff v. Joint CIT was overruled by this Court in Union of India v. Dharamendra Textile Processors, was that according to this Court the effect and difference between Section 271(1)(c) and Section 76C of the Act was lost sight of in the case of Dilip N. Shroff v. Joint CIT. However, it must be pointed out that in Union of India v. Dharamendra Textile Processors, no fault was found with the rasoning in the decision in Dilip N. Shroff v. Joint CIT, where the court

explained the meaning of the terms "conceal" and "inaccurate". It was only the ultimate inference in Dilip N. Shroff v. Joint CIT to the effect that mens rea was an essential ingredient for the penalty under Section 271(1)(c) that the decision in Dilip N. Shroff v. Joint CIT was overruled……"

Thereafter, so stating their Lordships' proceeded to hold as follows:-

"11. …..A mere making of the claim, which is not sustainable in law, by itself, will not amount for furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars."

5. In the present case, we find that both the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] and the Tribunal have given cogent reasons for setting aside the penalty levied under Section 271(1)(c) of the Act. The relevant portion of the impugned order of the Tribunal is reproduced hereinbelow:-

"4. We have considered the rival contentions, carefully gone through the orders of the authorities below and found from the record that assessee is engaged in the business of third party insurance administrative services (in short TPA) and has a network of branches to carry out such work. The company in its books recognized TPA fees as its income on the basis of apportioning 70% of the quarter in which the fees was received and balance 30% was booked as income in the next three quarters. Accordingly, the assessee followed matching concept of income and expenses to be incurred in respect of third party insurance. As the income was belonging to one year and the services were to be rendered for the entire one year, the amount of TPA fees received in the last quarter of the year was belonging to the period covering three quarters of the next year also. Keeping in view the expenses to be incurred in next three quarters, the part of the income was also postponed to the three quarters of the next year. The AO was of the view that entire fee should be booked as income in the quarter in which it was

received and invoiced and the apportionment in the next three quarters was not correct. As per assessee, it adopted principle of matching concept which requires that expenses for the accounting period should be matched against related income.

5. In view of the above discussion, it is crystal clear that assessee has given full disclosure with respect to the nature of income received and the expenses to be incurred thereon. Even in the Schedule-14 relating to the significant accounting policies and the notes annexed thereto, the assessee has clearly stated that "TPA fees" is invoiced to the insurance company on quarterly basis which is recognized as income on the basis of 70% of the amount invoiced in the first quarter to meet initiation car insurance related cost. Balance 30% was recognized over next three quarters equally. Point A(c) in Schedule-14 which related to revenue recognition. Entire information was furnished along with the return of income. We found that even in the quantum appeal filed by the assessee against the decline by the revenue authorities, such adoption of recognition of income, the Tribunal vide its order dated 25.6.2009 directed the AO to allow the claim of the assessee in this year relating to the corresponding expenses adopted in the next year and to rework out the income accordingly. AO was also directed to give consequence effect in the subsequent years also. The recognition of TPA income in this way and the justification furnished for the same was bona-fide. There was no concealment of income nor any furnishing of inaccurate particulars, therefore we do not find any infirmity in the order of CIT(A) for deleting the penalty with respect to recognition of the 30% of the TPA income as having been spread over the next three quarters, insofar as the TPA fee so received was belonging to the full year i.e. four quarters."

6. From the aforesaid, it is apparent that the respondent-assessee had made full disclosure and there was neither any concealment of income nor furnishing of inaccurate particulars. In fact, both the CIT(A) and Tribunal have found that the justification furnished by the respondent-assessee was bonafide. Consequently, keeping in view the conclusion of facts arrived at by the Commissioner as well as by the

Tribunal, the explanation offered by the respondent-assessee is b fide and the respondent-assessee's case would fall within the ambit of Explanation 1 to Section 271 of Act.

7. Accordingly, the respondent-assessee is not liable to pay penalty under Section 271(1)(c) of Act and thus the present appeal being devoid of merits is dismissed *in limine* but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 27, 2010
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