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

DECIDED ON: 08.05.2014

\+ CM APPL.4649 & 4650/2014 IN ITA 36/2002

M/S JYOTI PERSHAD JAGAN NATH ..... Appellant
Through: Mr. Anoop Sharma, Advocate.

versus

THE COMMISSIONER OF INCOME TAX, DELHI-X
..... Respondent
Through: Mr. Sanjeev Sabharwal, Sr. Standing Counsel with Mr. Ruchir Bhatia, Jr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIBHU BAKHRU

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

CM APPL.4650/2014 (for condonation of delay)

Allowed, subject to all just exceptions.

CM APPL.4649/2014 (for restoration)

For the reasons mentioned in the applications, this Court is of the opinion that the interest of justice requires that appeal should be restored on the file of this Court. Ordered accordingly.

CM APPL.4649/2014 is allowed.

ITA 36/2002

Issue notice. Mr. Sanjeev Sabharwal, Sr. Standing Counsel accepts notice on behalf of respondent.

The following question of law arises for consideration: -

> "Whether the Tribunal was justified in law in holding that the assessee's case was not covered under the amnesty scheme of 1986 and hence penalty under section 271 (1) (c) of the Income-tax Act, 1961 was leviable particularly when the Tribunal while dealing with assessee's appeal in respect of assessment year 1983-84 against penalty under section 273(2)(a) of the Act had held that the assessee was entitled to the benefit of the amnesty scheme?"

The brief facts are that the assessee had filed returns for AY 1983-84 on 26.12.1983; the assessment was completed on 10.07.1994. After completion of the assessment, an amnesty scheme appears to have been promulgated by the income tax authorities. The assessee sought to avail the benefit of the scheme and surrendered certain amounts towards investment allowance and depreciation. In the meanwhile, prior to the surrender made on 25.03.1987, a notice under Section 263 seeking to revise the assessment was issued by the Commissioner on 6.3.1987. Prior to this, income tax authorities had issued a letter dated 23.2.1987 in respect of AY 1983-84 and 1984-85 seeking certain particulars which included the question of admissibility of depreciation and investment allowance. In his reply given on 27.2.1987, i.e., prior to issuance of Section 263 notice, the assessee/appellant reiterated the claim made. Subsequently, reassessment notice was issued on 6.3.1987 and the amount was disallowed; penalty proceedings were initiated under Section 271 (1) (C) as well as under Section 273 (2). The matter went up to the Tribunal. In its earlier order of 1.6.2001 in respect of the same years,

i.e., 1983-84, the Tribunal directed deletion of the penalty under Section 273 (2) observing as follows: -

> *"8. After hearing both the sides and going through the record as well as circular of the Board, I find that benefit of amnesty cannot be denied to the assessee, in view of facts and circumstances of the case, as assessee has opted under the said scheme and it has not been stated by either of the authorities below that assessee has not fulfilled any of the conditions for grant of amnesty. However, when amnesty is applicable to the proceedings u/s 147 (a) or cases pending in appeals, therefore, in my considered view assessee is also entitled to the benefit of the said scheme. While accepting the appeal of the assessee I delete the penalty as imposed by AO and to the extent confirmed by Ld. CIT (A)."*

In respect of the penalty under Section 271 (1) (c), however, by the impugned order, the assessee's claim was rejected. The relevant findings of the ITAT in this regard are: -

> *"11. Now the second question that falls for our consideration is that if the revised return was filed subsequently on the basis of which the assessment was completed, would it call for the levy of penalty under section 271 (1) (c) or not. From the facts narrated in the preceding paragraph it becomes obvious that the revised return filed by the assessee was not a voluntary. It was only filed when the assessing Officer had recorded satisfaction as regards concealment and laid his hands over the necessary documents in this regard and compelled the assessee to furnish correct particulars of its income, which were earlier not disclosed. That being the situation, the revised return filed by the assessee, does not satisfy the condition of section 139 (5) being the discovery of any omission or wrong statement in earlier return. Under these circumstances, we are satisfied that the assessee has concealed its income and, therefore, the action of the learned CIT (Appeals) in this regard is justified....."*

The assessee urges that the surrender was made voluntarily and relied upon the answers to questions-1, 19 & 26 in terms of Circular No.451 dated 17.2.1986, comprising clarifications on the amnesty scheme. It was submitted that in terms of these answers given by the Department to these questions, the surrender of amounts was voluntary and was not made after detection of the wrongful claim. It was lastly urged that, given the view of the Tribunal in respect of the penalty under Section 273 (2) of the Income Tax Act, the finding that penalty under Section 271(1)(c) is warranted is in clear error of law inasmuch as it has resulted in inconsistent views in regard to the same subject matter.

The Revenue urges that having regard to the conspectus of circumstances, this was a clear case where assessee had made wrongful claim, persisted in its reply to the query and reiterated its earlier submissions as late as 27.2.1987. It was urged that the surrender was made when virtually the writing on the wall was seen, after issuance of notice dated 6.3.1987. This clearly indicated detection of wrongful claims and, therefore, benefit of the Circular to escape penalty could not have been availed of. It was, therefore, urged that the impugned order of the Tribunal does not require any interference.

It is evident from the above discussion that in respect of the same assessment year 1983-84 for the same act, i.e., claim for investment allowance and depreciation which was otherwise inadmissible, the assessee surrendered the amount on 25.3.1987. It is perhaps possible to take either view as to whether the assessee in the

circumstances of the case had, in fact, surrendered these amounts after detection, which would of course justify the penalty. However, this Court is of the opinion that the Tribunal in its earlier order having concluded that the penalty was not justified under Section 273 (2) could not have, without distinguishing that reasoning, upheld the penalty under Section 271 (1) (c). In these circumstances, the question of law is answered in favour of the assessee and against the Revenue. The appeal is consequently allowed.

S. RAVINDRA BHAT
(JUDGE)

VIBHU BAKHRU
(JUDGE)

MAY 08, 2014
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