THE HIGH COURT OF DELHI AT NEW DELHI

% **Judgment delivered on: 04.07.2008**

+ ITA Nos. 677/2008 & 679/2008

THE COMMISSIONER OF INCOME TAX – XVII ... Appellant

Through : Ms Rashmi Chopra
with Mr Subhash Sharma

- versus –

DHIR GLOBAL INDUSTRIES PVT. LTD. ... Respondent

Through: None.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether 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 Digest ?

BADAR DURREZ AHMED, J (ORAL)

CM No. 7834/2008 in ITA 677/2008

Allowed subject to all just exceptions.

ITA Nos. 677/2008 & 679/2008

1. These appeals pertaining to the assessment years 2000-2001 and 2001-02 have been preferred against the common order of the Tribunal passed on 03.08.2007. The only issue sought to be raised by

under Section 272A (2) (g) of the Income Tax Act, 1961 (hereinafter referred to as the 'said Act'). According to the learned counsel for the revenue the levy of such penalty by the Assessing Officer ought to have been confirmed by the Income Tax Tribunal. According to the learned counsel the imposition of penalty under Section 272A (2) (g) of the said Act is independent to the penalties that can be levied under Section 221 which pertain to default in depositing the tax deducted at source, which is a consequence of the assessee being in default in view of the provisions of Section 201 (1). The present case, according to the learned counsel, falls under Section 203 (1) of the said Act and the two are unrelated and independent.

2. The Tribunal has noted that by virtue of its earlier order dated 26.08.2005 in ITA Nos. 117 and 118/D/2002, after considering the explanation of the assessee, it held that the assessee was not in default under Section 201 (1) of the said Act and thereby there was no question of imposing penalty under Section 221 of the said Act. The Tribunal took the view that if on the basis of the explanation of the assessee the Tribunal has already held the assessee not to be in default under Section 201 (1) of the said Act, then on the basis of the same explanation the assessee cannot be held to be in default, *inter alia*, under Section 272A (2) (g) of the said Act for levying the penalty. The

filing of the annual TDS returns and issuance of TDS certificates to the deductees was dependent on the deposit of TDS as well as copy of TDS certificate and details of TDS deposits which were required to be given in the TDS returns as also in the TDS certificates. The explanation given by the assessee for the delay in making the deposits and in filing the TDS returns has been accepted. In these circumstances, the Tribunal was of the view that once the explanation for the delay, which is common, both, for the making of the deposit and filing of the TDS return, on the one hand, and the issuance of the TDS certificate on the other, has been accepted, then there is no question of imposing a penalty on the assesee even under Section 272A (2) (g) of the said Act.

3. We have also examined Form 16-A, which is a form in which the TDS certificate is to be issued in terms of Rule 31 (1) (b) of the Income Tax Rules, 1962. It is apparent from an examination of the said form that the TDS certificate can only be issued after the TDS amount is deposited with the Central Government in the bank. The details of the challan through which the deposit has been made are also required to be filled in the said certificate. Therefore, it cannot be said that the issuance of the TDS certificate is independent to the making of the TDS deposit. Once the explanation of delay in making the deposit has been accepted, there is no reason as to why the same cannot be used

Income Tax Tribunal has committed no error. No substantial question of law arises. These appeals are dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER), J

July 04, 2008
SR