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* IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 536/2012

DIRECTOR OF INCOME TAX Appellant
Through: Mr. Abhishek Maratha, Sr. Standing
Counsel.

versus

MAHARAJI EDUCATION TRUST Respondent
Through: Mr. Vivek Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.V.EASWAR

ORDER
31.10.2012

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1. The question of law sought to be urged on behalf of the Revenue in this appeal against the Tribunal's order dated 21.11.2011 in ITA 4209/Del/2011 is as to the legality and correctness of its order, upholding the Appellate Commissioner's order which directed the setting aside of the penalty imposed upon the assessee under Section 271E in respect of the payment made to the tune of Rs.75 Lakhs in cash.
2. The brief facts of the case are that the assessee - a trust - was faced with adverse orders and had to satisfy decree of the Debt Recovery Tribunal (DRT). At that stage, the Trustee Dr. P. Mahalingam arranged the requisite funds from another concern i.e. Ayush Commercial Private Limited through two cheques/demand drafts i.e. of Rs.50 Lakhs and Rs.25 Lakhs. This saved the trust's property and assets from execution and other proceedings directed by the DRT: an adverse decree stood satisfied. The assessee repaid the amount to the Ayush Commercial Private Limited from whom the amounts were obtained by its trustee in cash. The Assessing Officer imposed penalty, reasoning that

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the mandatory provision of Section 269T have been violated on account of the payments made - in discharge of the debt - in cash and directed recovery of penalty amount under Section 271E. The assessee's appeal to the CIT (A) succeeded; the Revenue's appeal to the ITAT was dismissed by the impugned order.

3. It is argued on behalf of the Revenue that the records clearly establish facially a violation of the mandatory provision of Section 269T. It is also urged that there was nothing on the record to suggest that in fact the payment received was diverted for the ultimate objective i.e. to satisfy the DRT's decree.

4. Both the CIT (A) as well as the Tribunal have, after considering the records, particularly noticed that the payment had indeed been made to the DRT from the funds borrowed and that the trust was constrained to pay back the amount to the ultimate creditor i.e. Ayush Commercial Private Limited in cash in order to avoid an ugly situation. The Tribunal further reasoned while rejecting the Revenue's appeal as follows:

"6. We have heard the rival contentions in light of the material produced and precedent relied upon. We find that Ld. Commissioner of Income Tax (Appeals) has given a finding that provisions of section 273B are attracted. In this case there was reasonable cause for the failure to comply with the provisions in this regard. In this case Rs.75 Lacs was advanced by Dr. P. Mahalingam to Maharaji Educational Trust vide DD and cheque. The above mentioned amount was received back in lump sum from Maharaji Educational Trust on 28.6.2006. The amount received back was received in cash and paid to Ayush Commercial (P) Ltd. from whom he has raised the funds temporarily for the payment to the DRT on behalf of the trust. The payment was made to Ayush Commercial (P) Ltd. amounting to Rs. 75 lacs on 28.6.2006 by account payee cheque drawn on the Bank of Rajasthan Ltd. As Ld. Commissioner of Income Tax (Appeals) has rightly observed that there was no element of penalty is involved. The amount was given by Dr. P. Mahalingam by DD or cheque, which was returned on 28.6.2006 immediately by a cheque payment of Rs. 75 lacs was made in the name of Ayush Commercial (P) Ltd. The copy of cheque issued to Ayush Commercial (P) Ltd. was also submitted. Under the circumstances, we agree with the finding of the Ld. Commissioner of Income Tax (Appeals) that the case is covered u/s 273B of the IT Act. Accordingly, we do not find any infirmity in the order of the Ld. Commissioner of Income Tax (Appeals) and hence, we uphold the same.

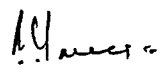
7. In the result, the appeal filed by the Revenue stands dismissed."

5. This Court has considered the submissions of the Revenue and is of the opinion

that the concurrent view of the authorities below including the Tribunal cannot be characterized as unreasonable having regard to the facts and circumstances established.

6. In this view of the matter, no substantial question of law is arises. The appeal is accordingly dismissed.


S. RAVINDRA BHAT, J


R.V.EASWAR, J

OCTOBER 31, 2012
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