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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM No. 9159/2013 & ITA 288/2013**

THE COMMISSIONER OF INCOME TAX-III

..... Appellant

Through Mr. Rohit Madan, Advocate.

versus

SAPIENT CORPORATION PVT LTD

..... Respondent

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

23.07.2013

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There is delay of 262 days in filing of the appeal. It is stated that there was change in counsel resulting in the said substantial delay. However, before issuing notice on the said application, we have deemed it appropriate to examine and consider the case of the appellant on merits, as we find that no ground for issue of notice on merits is made out.

2. The respondent assessee is a company and for the Assessment Year 2004-05 reassessment proceedings were initiated on the ground that Rs.37,31,971/- towards unpaid leave encashment should have been

disallowed under Section 43B of the Income Tax Act, 1961.

Assessment order dated 23rd September, 2009 was passed making the said addition after noticing that the respondent-assessee in his reply had mentioned ~~the relevant~~^{the} details, but the reply filed by the assessee was unacceptable. No facts have been discussed in the assessment order.

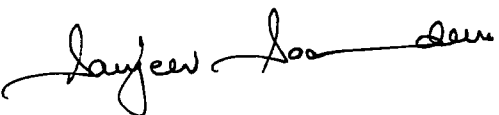
3. The Commissioner of Income Tax (Appeals) noticed that the appellant had filed a letter before the Assessing Officer, stating that they had made payment of Rs.37,26,812/- towards leave encashment during the period relevant to the Assessment year 2004-05. It was also recorded that the opening outstanding balance of unpaid leave encashment was Rs.1,34,65,505/-. Thus, this amount of Rs.37,26,812/- should be allowed as a deduction and the net addition should be Rs.5,159/-. This plea of the assessee has been accepted by the CIT (Appeals) and the tribunal. The said observation and the findings recorded by the CIT (Appeals) and the tribunal are correct and ~~did~~^{do not} not require any interference, once the Revenue has accepted that payment of Rs.37,26,812/- was made and there was an outstanding balance of unpaid leave encashment of more than Rs.1 crore in the beginning of the year. In spite of being repeatedly questioned, learned counsel for the appellant-Revenue has not stated that Rs.37,26,812/- was included and was claimed as expenditure in the earlier years.

(4)

4. Learned counsel for the appellant has submitted that the total disallowance made by the CIT (Appeals) and the tribunal was Rs.50,935/- and, therefore, the assessee had probably not stated the true and correct facts. This aspect was not urged by the Revenue before the tribunal. It is correct that the tribunal has recorded that disallowance was made of Rs.50,935/-, but this was on account of the fact that the assessee had pointed out an error in the computation and as they had wrongly claimed Rs.45,476/- in excess towards leave encashment account. No notice is required to be issued on the said aspect/finding.

5. In view of the aforesaid position, we do not think it is necessary to issue notice on the application for condonation of delay and consequently the said application along with the appeal are dismissed.

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SANJIV KHANNA, J.


SANJEEV SACHDEVA, J.

JULY 23, 2013
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