THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.T.T.A. No. 733 of 2014

DATE: 31.12.2014

Between:
The Commissioner of Income Tax-I,
Hyderabad.

… Appellant

And

M/s. Agarvanshi Aluminium Ltd.,
Secunderabad.

… Respondent

This Court made the following:

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.T.T.A. No. 733 of 2014

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Judgment: (per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

This appeal is sought to be preferred against the judgment and order of the learned Tribunal dated 22.02.2013 in relation to the assessment year 2000-2001 on the following suggested questions of law:

1. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is correct in law in deleting the penalty in the light of its finding that there was concealment of income ?

2. Whether, on the facts and circumstances of the case and in law, the Hon'ble ITAT is correct in concluding that no penalty under Section 271(1)(c) of the Income Tax Act can be levied when the income is computed under Section 115JB of the Income Tax Act ?

3. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is correct in holding that there was no normal computation of income in the assessee's case and therefore no penalty under Section 271(1)(c) can be levied without appreciating that the income under normal provisions of the I.T.Act was also computed in the assessment order by making an addition of Rs.91,41,035/- ?

We have heard Mr. J.V. Prasad, learned counsel for the Revenue and have gone through the impugned judgment and order of the learned Tribunal.

It appears, the learned Tribunal, on fact, found that the pre-conditions for initiation of penalty proceedings were not fulfilled. In other words, the element of concealment of the income was not to be found. However, Mr. Prasad says that the Tribunal's own finding is that there is concealment of income. We think that the finding has to be read as a whole and a portion thereof should not be picked up for rendering a decision. When we read the entire fact finding of the learned Tribunal, we come to the conclusion that the finding was reached by the learned Tribunal that there is no concealment of income. Therefore, the pre-conditions for initiation of penalty proceedings are not satisfied.

The appeal is accordingly dismissed.

Consequently, pending miscellaneous petitions, if any, shall also stand closed. No costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

Date: 31st December, 2014

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