HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

PRESENT

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

I.T.T.A. NOs.666 AND 667 OF 2014

DATED:29.1.2015

Between:

Commissioner of Income Tax (TDS)
I.T. Towers, A.C. Guards
Hyderabad
… Appellant

And

M/s. Country Club India Limited
H.No.:6-3-1219, Begumpet
Hyderabad … Respondent

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

I.T.T.A. NOs.666 AND 667 OF 2014

COMMON JUDGMENT: (per the Hon'ble The Chief Justice Sri Kalyan Jyoti Sengupta)

Pre-admission notice has already been issued in these appeals.

We have heard Mr.B.Narasimha Sarma, learned counsel for the appellant – revenue. After hearing him and going through the impugned judgment and order of the learned Tribunal, we thought it fit to admit these appeals on the following suggested question of law and dispose of the same by this common judgment.

> In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is correct in law in deleting the penalty imposed under Section 272A(2)(k) of the Income Tax Act 1961 with a finding that it is not a fit case for imposing of the said penalty?

We have seen the discussion and findings of the learned Tribunal in the impugned judgment and order and it appears that the learned Tribunal after noting the fact, waived the penalty, but it has not mentioned, whether on the facts and circumstances of the case, penalty can be waived totally or not and whether it had a power to do so in the peculiar facts and circumstances of the case or not. In the absence of any such discussion, we think that full waiver of penalty of huge amount cannot be accepted. We therefore set aside the impugned judgment and order of the Tribunal. We direct the Tribunal to decide the questions as indicated in our order. This exercise shall be done within a period of three months from the date of communication of this order.

The appeals are accordingly allowed. There shall be no order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR,

J
29.1.2015

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