IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-71-2013 (O&M)
Date of decision:- 07.05.2015

The Commissioner of Income Tax-II, Chandigarh
...Appellant

Versus

M/s Arsh International, Mohali
...Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Ms. Urvashi Dhugga, Advocate,
for the appellant.

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S.J. VAZIFDAR, A.C.J. (ORAL)

This is an appeal against the order of the Tribunal dated 30.08.2012 dismissing the appeal against the order of the Commissioner of Income Tax (Appeals) setting aside the penalty under Section 271 (1) (c) of the Income Tax Act, 1961 for failure to deduct tax at source as required by Chapter 17.

2. The appeal was admitted by an order dated 08.10.2013 on the following substantial question of law:-

> *"Whether in view of the facts law and circumstances of the case, the ld. ITAT erred in law in deleting the penalty levied u/s 271(1)(c) for furnishing inaccurate particulars of income by making patently wrong claim of expenses, resulting in non-payment of due taxes on its income?"*

3. The issue as to whether the provisions of Section 40 (a) (ia) of the Income Tax Act, 1961 are applicable to cases where payments have been made to the payee by the end of the assessment year was decided by us in favour of the revenue in a group of appeals decided on 29.04.2015 the first of which is ITA-716-2009 titled as *P.M.S. Diesels, Phagwara Vs Commissioner of Income Tax-II, Jalandhar*.

4. We have held in favour of the revenue on all counts in this regard. However, at the relevant time, a Special Bench of the Tribunal had taken a contrary view in the case of *ACIT Vs Merilyn Shipping & Transports [136 ITD 23(SB) (Vishakhapatnam)]*. As we noted in our judgement, a contrary view had been taken by the Allahabad High Court. In these circumstances, we see no warrant to interfere with the exercise of discretion of the Tribunal in setting aside the order of penalty.

5. The question of law is accordingly answered against the revenue and in favour of the assessee/respondent. The appeal is accordingly dismissed.

There shall be, however, no order as to costs.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

07.05.2015
Amodh