IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-29-2015 (O&M)
Date of decision:- 05.05.2015

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

Versus

M/s Hero Cycles Ltd.
...Respondent

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

Present: Ms. Savita Saxena, Advocate,
for the appellant.

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

CM-3371-CII-2015 (for condonation of delay in refiling)

For the reasons mentioned in the application, the delay of 360 days in refiling the appeal is condoned.

Disposed of.

CM-3372-CII-2015 (for exemption)

The application is allowed subject to all just exceptions.

ITA-29-2015

This is an appeal against the order of the Income Tax Appellate Tribunal dated 20.05.2013 dismissing the appellant's appeal against the order of the CIT (Appeals) which set aside the A.O's order imposing a penalty under Section 271(1)(c) of the Income Tax Act, 1961.

2. The matter pertains to the assessment year 2002-2003. The respondent/assessee claimed a deduction in respect of the work done on the roof of the factory contending that it was a revenue expense. The quantum proceedings, we are informed, have attained finality and have been decided against the respondent/assessee. It has been held that the same was a capital expense. We would presume that to be so. The Tribunal has, however, agreed with the CIT (Appeals) that the penalty ought not to be imposed for there does not appear to have been any concealment of the relevant facts. The assessee bonafide contended that it is entitled to treat the expenses on revenue account. It is not contended that merely because the quantum

proceedings are decided against the assessee, penalty must follow irrespective of the facts and circumstances of the case. The CIT (Appeals) has in a detailed judgement considered the law and the facts. The Tribunal has agreed with the same. We see no reason to interfere with the exercise of discretion by the authorities. The exercise of discretion cannot be said to be unfair, unreasonable or perverse.

3. It is sufficient to note only a few things. There were several decisions of the CIT (Appeals) in the respondent's own case. Earlier, the CIT (Appeals) had allowed the expenses to be treated on revenue account. The Tribunal had several years later held in favour of the revenue holding that the expenses must be held to be on capital account. This was the basis of a judgement of the Supreme Court which was rendered subsequently. Thus, though the quantum appeal has been decided against the respondent, there is nothing to indicate that the respondent suppressed any fact or that the respondent misled the authorities. It was a legal contention. In these circumstances, the Tribunal's reliance upon the judgement of the Supreme Court in *CIT Vs Reliance Petroproducts Pvt. Ltd.*, 322 ITR 158 was well founded. The observations of the Supreme Court have been specifically mentioned in the concluding paragraph of the decision of the Tribunal itself.

4. The appeal is, therefore, dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

05.05.2015
Amodh