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* IN THE HIGH COURT OF DELHI AT NEW DELHI
18.
+ **ITA 480/2012**

CIT ..... Appellant

Through Mr Rohit Madan, Advocate.

versus

HCIL KALINDEE ARSSPL ..... Respondent

Through Mr Anand Varma, Advocate.

**AND**

19.
+ **ITA 481/2012**

CIT ..... Appellant

Through Mr Rohit Madan, Advocate.

versus

HCIL ARSSPL TRIVENI (JV) ..... Respondent

Through Mr Anand Varma, Advocate.

**CORAM:**
**HON'BLE DR. JUSTICE S.MURALIDHAR**
**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**
% **23.09.2015**

1. These are two appeals by the Revenue directed against the common impugned order dated 25th November, 2015 passed by the ITAT in ITA Nos. 4580/DEL/2010 and 4579/DEL/2010 for the Assessment Year ('AY') 2007-

08 allowing the appeals in favour of the Assessees both of whom are joint ventures.

2. The question of law framed in both these appeals is "Whether the ITAT erred in law and on merits in deleting the penalty levied u/s 271 (1) (c) of the Income Tax Act, 1961?"

3. In the course of the assessment proceedings the AO noted that the Assessee had claimed deduction under Section 80I A of the Act in terms of the Auditor's report in Form NO. 10CCB. The AO disallowed the claim by referring to the Explanation under Section 80I A (13) of the Act. The additions directed to be made by the AO attained finality with the Assessee not challenging the said order.

4. The AO ordered penalty proceedings to be initiated against the Assessee for furnishing inaccurate particulars of the income.

5. It has been noted by the ITAT in the impugned order that the Explanation under Section 80I A (13) of the Act was inserted by the Finance Act, 2007 which received the assent of the President on 11th May, 2007. The deduction was claimed by the Assessee in the return filed on 1st November 2007 i.e.

within the six months thereafter. The deduction was claimed on the basis of the report of the Chartered Accountant in Form 10 CCB. The ITAT accepted the submission of the Assessee that the said Explanation below Section 80 I A (13) was over looked not only by the Assessee but also by its auditors while submitting their report in Form 10CCB. The ITAT therefore was of the view that this was not a case whether the Assessee had not disclosed the full details. It had claimed the deduction only on the basis of the report of the auditors as required by the Act.

6. The Court is of the view that the facts of the present case are different from those in ***CIT v NG Technologies Ltd*** (decision dated 1st December, 2014 in ITA 82/2012) relied upon by Mr. Rohit Madan, learned Standing Counsel for the Revenue. That was not a case where a claim was made by the Assessee on the basis of the report of its auditors as statutorily mandated.

7. On the facts of the present case, the view taken by the ITAT that the deduction claimed was bona fide and on the basis of the certificate of the auditors appears to be a plausible one and cannot be said to be suffering from any perversity.

8. Consequently, the question framed is answered in the negative i.e. in

favour of the Assessee and against the Revenue.

9. The appeals are dismissed.

**S.MURALIDHAR, J**

**VIBHU BAKHRU, J**

**SEPTEMBER 23, 2015**
pkv