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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on 13th March, 2015

+ ITA 194/2015

COMMISSIONER OF INCOME TAX

..... Appellant

Through: Mr.Rohit Madan and Mr.Ruchir
Bhatia, Advs.

versus

JAIN EXPORT PRIVATE LTD

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The Revenue is aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) dated 04.09.2014 in ITA No.5625/Del./2011. It is stated that the penalty imposed by the Assessing Officer (AO) for Assessment Year (AY) 2006-07, under Section 271(1)(c) of the Income Tax Act, 1961, in the sum of Rs.14,90,000/- was wrongly cancelled by the ITAT.

2. The transaction in question reported by the assessee for the relevant AY pertained to the sale of shares of one Pashupati Haryana Woollen Mills Ltd. (PHWL). These shares were purchased during different years at a cost of ₹44,26,250/- lakhs. The record evidences that the acquisition of such shares in the relevant year was duly reported and accepted by the AO's concerned. PHWL was eventually directed to be wound up; it was referred

to the Board of Industrial and Financial Reconstruction (BIFR), for the purposes of rehabilitation. Ultimately, those efforts failed. During the intervening period the assessee had acquired shares at different periods –the last acquisition being in AY 2004-05 of 4,20,000 shares for a total amount of ₹23,76,250/-. In the quantum proceedings, the assessee's contentions were rejected and the amount of ₹44,20,250/-, which was claimed as loss was disallowed. The penalty proceedings were adverse to the assessee up to the stage of the ITAT. The ITAT by the impugned order directed the deletion of penalty amount based on reasoning that the AO did not make any effort to discharge the burden placed upon him to investigate and to bring on record some material to dispute the assessee's contentions with regard to the actual sale being at Rs.6000/-.

3. The Revenue urges that the assessee accepted the additions made in the circumstances since there was no explanation as to how the shares were purchased for over ₹23 lakhs in AY 2004-05, the disallowance was justified, as was the penalty.

4. The ITAT pertinently observed as follows:

“It is further relevant to note that what the AO found was that the PHWL was registered with BIFR even prior to the date stated by the assessee. Despite these facts and the assessee making it clear that the shares became worthless and the assessee could manage to sell these shares for a paltry sum of ₹6000, the AO carried out no investigation worth the name to bring on record some material to disprove the facts stated by the assessee. It goes without saying that apparent is to be taken as a real unless proved otherwise and the burden to prove that apparent is not real is not the one who claims so. When we examine the facts, it is found that the AO has not discharged onus on him to prove that apparent was not real. Except for the ipse dixit, there is not substantiation of his stand that the sale

price was manipulated. What to talk of proving such a thing, the AO has not even taken pains in explaining that the market price of the shares was more than that realized by the assessee. The ld. CIT(A) has proceeded to confirm the penalty by holding that the purchase price of such shares was doctored. We fail to comprehend as to how such a view can be canvassed given the situation that such shares were purchased in earlier years and the figure of Investment in shares is only a brought forward balance. When the purchase price of the shares has not been disputed by the AO in any of the earlier assessments, how the authorities can canvass a view in the instant year that such purchase price was inflated in earlier years and the figure of Investment in share is only a brought forward balance. When the purchase price of the shares has not been disputed by the AO in any of the earlier assessments, how the authorities can canvass a view in the instant year that such purchase price was inflated in earlier years. It is trite that the transactions which have not been disputed in the earlier years cannot be reviewed in the assessment of the subsequent years. This type of stand would have been admissible if the AO had not accepted the purchase price of shares as genuine in the assessment of such years when these shares were purchased. Once these transactions have been accepted, then it is not possible to take up such issue for examination in the assessment of the subsequent year. The only transaction which took place in the instant year is the sale of such shares. Since there is nothing to show that the sale price of shares was not properly shown, there can be no question of imposing or confirming any penalty by presuming that either the sale consideration declared by the assessee was less or the purchase price of the shares in the earlier years was inflated. We, therefore, set aside the impugned order and direct the deletion of penalty.”

5. It is now well established that Section 271(1)(c) of the Act does not compel the Revenue to initiate proceedings imposing penalty in all cases where findings were adverse against the assessee at a given point of time,

leading to addition of amounts or disallowance. Possibly, an explanation may have been required from assessee in the given facts of this case as to why it acquired the shares even when the company was facing winding up proceedings but the fact remains that the efforts to rehabilitate the company were undertaken. The lack of proper explanation undoubtedly might have justified the addition. The disallowance was ultimately directed and upheld by the ITAT, however, the reasoning of the ITAT in holding that the penalty proceedings required satisfaction of a higher threshold of proof, which confirmed the basis for it, ultimately cannot be faulted. No question of law arises in the circumstances of the case. The appeal is consequently dismissed.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

MARCH 13, 2015

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