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

+ ITA 544/2015

PRO COMMISSIONER OF INCOME TAX-6

..... Appellant

Through: Mr Kamal Sawhney, Mr Ragvendra Singh
and Mr Shikhar Garg

versus

NADISH REAL ESTATES PVT. LTD

..... Respondent

Through: Ms Kavita Jha and Ms Roopali Gupta for
respondent
Mr Anuj Aggarwal for R-3&4

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% **24.09.2015**

This appeal preferred by the revenue against the order dated 09.01.2015 passed by the Income Tax Appellate Tribunal in ITA No. 4444/Del/2013 for assessment year 2006-07 pertains only to the aspect of penalty under Section 271(1)(c) of the Income-tax Act, 1961 to the extent of Rs 13,08,890/-.

In brief the respondent / assessee had filed a loss return of Rs 38,86,482/-. The loss had occurred due to certain expenses which had been made by the assessee which the assessee had claimed as business expenditure. The Assessing Officer disallowed the entire expenditure on account of the fact that the assessee had not commenced its business. It was the case of the assessee that it had commenced its business as it has started negotiations for purchase of land. Be that as it may, insofar as the quantum of appeal is concerned that has been decided against the assessee and in favour of the revenue. Therefore, the finding of fact against the assessee is that the assessee had not commenced its business and the expenditure claimed by it was not allowable.

The issue before the Tribunal in the said appeal was whether the penalty which had been levied by the Assessing Officer under Section 271(1)(c) of the said Act was justified or not. The Tribunal placed reliance on the decision of the Supreme Court in the case of **CIT v. Reliance Petroproducts Pvt. Ltd.**: (2010) 322 ITR 158 (SC). The Tribunal came to the conclusion that the claim made by the assessee was on a point of

law which was ultimately not found to be correct. But according to the Tribunal the mere fact that the claim was incorrect would not make the assessee liable for penalty under Section 271(1)(c). As long as the assessee's claim was *bona-fide*, the liability of penalty would not arise. The Tribunal examined the nature of the claim made by the assessee in the following manner:-

“In the case of the assessee, we find that the returned income of the assessee was loss of Rs 38,86,482/- and, after disallowance of expenses, income assessed is nil. Thus, there was no tax liability on the assessee which may motivate it to make a bogus claim of the expenditure. Even otherwise, the genuineness of the expenses has not been doubted by the Revenue. The fact that the assessee started negotiation for the purchase of land is also not disputed. Considering the totality of these facts, we find no material to hold that the claim for the deduction of the expenses was mala-fide. Therefore, on these facts, in our opinion, the decision of Hon'ble jurisdictional High Court in the case of Zoom Communication P. Ltd. (supra) would not be application, but the decision of the Hon'ble Apex Court in the case of Reliance Petroproducts Pvt. Ltd. (supra) would be applicable. Respectfully following the same, we cancel the penalty.”

We do not find any infirmity in the manner in which the Tribunal has examined the issue and has ultimately cancelled the penalty. The decision of the Supreme Court in **Reliance Petroproducts Pvt. Ltd.** (supra) was clearly applicable. No substantial question of law arises for our consideration.

The appeal is dismissed.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

SEPTEMBER 24, 2015

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