IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 760 of 2008 (O&M)

Date of Decision: 11.05.2016

The Commissioner of Income-Tax, Patiala

.......Appellant

Versus

M/s Mohindra Steels

......Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Zora Singh Klar, Advocate
for the appellant.

Mr. Divya Suri, Advocate
for the respondent.

RAJESH BINDAL,J.

This appeal has been filed under Section 260 A of the Income Tax Act, 1961 (for short 'the Act'), against the order dated 31.3.2008 passed by the Income Tax Appellate Tribunal, Chandigarh Bench-B, Chandigarh, in ITA No. 815/Chd./2007, for the assessment year 1995-96, raising the following substantial questions of law:

> (i) Whether on the facts and in the circumstances of the case, the ITAT was justified in deleting the penalty by holding that since the enhancement was made by the CIT (A), penalty had also to be levied by him alone?
>
> (ii) Whether on the facts and in the circumstance of the case, the ITAT was justified in deleting the penalty by holding that the Ld. Assessing Officer had not recorded any satisfaction without appreciating that the order of the CIT(A) making enhancement and recording satisfaction u/s 271(1)(c) had got merged with the order of the A.O.

when the latter passed an order giving effect to the said order of the CIT (A)?

(iii) Whether on the facts and in the circumstance of the case, the ITAT's order was perverse in holding that no penalty was leviable because there was a difference of opinion between two authorities ignoring the fact that the superior authority only enhanced the concealment/suppression and also upheld the suppression and addition made by the A.O.?

(iv) Whether on the facts and in the circumstance of the case, and even after the insertion of sub section (1B) to Section 271 by the Finance Act, 2008 effective retrospectively from 01.04.1989 the ITAT was justified in giving the said finding on the point of recording of satisfaction before initiation of penalty u/s 271(1)?

Learned counsel for the appellant-revenue submitted that in view of circular No.21/2015 dated 10.12.2015 read with circular No.279/Misc/M-142/2007-ITJ (Part) dated 8.3.2016, issued by Central Board of Direct Taxes, he does not wish to press the present appeal, as the tax effect involved is less than ₹ 20 lacs. However, he prays that liberty be granted to the revenue to file an application for revival of the appeal in case something survives therein.

Dismissed as not pressed with liberty as prayed for. It is however, clarified that withdrawal of the appeal by the revenue shall not be taken as affirmation of order of the Tribunal on merits. The legal issue as claimed by the revenue is left open to be adjudicated in an appropriate case.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

11.05.2016
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