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

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+ **ITA 313/2016**

PR. COMMISSIONER OF INCOME TAX-DELHI -III..... Appellant
Through: Mr.P.Roy Chaudhuri, Senior Standing
counsel with Ms. Lakshmi Gurung, Junior
Standing counsel.

versus

FORTUNE TECHNOCOMPS (P) LTD. Respondent

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER
% **13.05.2016**

CM No. 17985 of 2016(exemption)

1. Allowed subject to all just exceptions.

ITA No. 313 of 2016

2. This appeal by the Revenue is against the order dated 19th October 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.4539/Del/2013 for the Assessment Year ('AY') 2007-08.

3. By the impugned order the ITAT affirmed the order of the Commissioner of Income Tax (Appeals) [CIT(A)] deleting the penalty imposed by the Assessing Officer ('AO') under Section 271(1)(c) of the Income Tax Act, 1961 ('Act'). The ITAT has in the impugned order noted that in the appeal filed by the Assessee in the quantum proceedings against the order of the

AO making addition on account of bogus purchases, the CIT (A) disallowed the loss of Rs.55,53,994 claimed by the Assessee on sale of some of the unbranded items out of the purported purchases made from nine parties. Further a sum of Rs.12,77,202 was added as additional income by applying the estimated gross profit rate of 4.25% on the declared sales. The ITAT thus concluded that the CIT(A) had made the overall addition of Rs. 68,31,196 on 'estimated basis'. Consequently, the ITAT felt that this is not a case where a penalty was leviable under Section 271(1) (c) of the Act.

4. Mr. P.Roy Chaudhuri, learned counsel for the Revenue urged that while additions of Rs. 12.77 lakhs may have been the basis of the estimated gross profit rate, the disallowance of loss of Rs.55,53,994 was not based on any estimate, therefore the penalty could not be deleted. He further submitted that the ITAT was in error in holding that the AO was denuded of the power to initiate penalty proceedings once the CIT (A) had deleted the additions made by the AO in the original assessment proceedings. According to him, the CIT (A) had merely modified the order of the AO.

5. The Court notes that in the quantum proceedings originally the AO had proposed an addition to the extent of Rs.3,62,49,274/- as bogus transactions of purchases shown by the assessee from nine parties, as the alleged sellers were not traceable. In the appeal by the Assessee the CIT (A) held that the entire purchases could not be treated as bogus since the assessee had established the identity of the suppliers who had made substantial supplies. The CIT (A) held that the purchases made by the assessee were genuine and deleted the addition made by AO and instead made an addition of Rs.

68,31,196 in the manner and for the reasons noted hereinabove. This order of the CIT (A) stood affirmed by the ITAT when it dismissed the Revenue's quantum appeal.

6. Despite the basis for issuance of the penalty notice under Section 271 (1) (c) having disappeared with the deletion by the CIT (A) of the addition made by the AO, the latter continued with the penalty proceedings and imposed the penalty as noted above. This was set aside by the CIT (A). The Revenue then went in appeal before the ITAT which by the impugned order affirmed the order of the CIT (A). Relying on the decision of the Calcutta High Court in *CIT v. Ananda Bazar Patrika Pvt. Ltd. (1979) 116 ITR 416 (Cal)*, the ITAT held that "once the basis for initiation of penalty proceedings was altered or modified by the first appellate authority, the Assessing Officer has no jurisdiction thereafter to proceed on the basis of the findings of the first appellate authority."

7. Having examined the impugned order of the ITAT and having considered the submissions of the learned counsel for the Revenue, the Court is unable to discern any legal infirmity in the analysis or conclusion reached by the ITAT. Once the assessment order of the AO in the quantum proceedings was altered by the CIT (A) in a significant way, the very basis of initiation of the penalty proceedings was rendered non-existent. The AO could not have thereafter continued the penalty proceedings on the basis of the same notice. Also, the Court concurs with the CIT (A) and the ITAT that once the finding of the AO on bogus purchases was set aside, it could not be said that there was any concealment of facts or furnishing of inaccurate particulars by the

Assessee that warranted the imposition of penalty under Section 271 (1) (c) of the Act.

8. No substantial question arises for determination.

9. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 13, 2016
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