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

\+ ITA 300/2016

PR. CIT-6 ..... Appellant

Through : Sh. Raghvendra Singh and Sh. Rahul Chaudhary, Advocates.

versus

MACHINTORG (INDIA) LTD. ..... Respondent

Through : None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% 08.11.2016

1. In this appeal under Section 260A of the Income Tax Act, 1961 [hereafter "the Act"], the revenue claims to be aggrieved by the setting aside of the penalty imposed by the Assessing Officer (AO) under Section 271(1)(c) of the Act. The assessee had, during the AY 2008-09 reported a transaction of sale of its assets. The case was selected for scrutiny. The property sold was an industrial plot in Sector 80, Noida. During the course of assessment, the AO enquired why the gains for the transfer accrued were not offered to tax. The assessee's reply stated that it was under the belief that the capital gains gained and its utilization in the manner done in this case was entitled to the exemption under Section 54G. The assessee claimed a mistake and offered the gains. At the time of finalization of assessment, the AO issued notice under Section 271(1)(c) and separately passed penalty order to the tune of ₹24,75,000/-. The

assessee's contentions were rejected by the Commissioner of Income Tax (Appeals) [hereafter "CIT(A)"]. The Income Tax Appellate Tribunal (ITAT), by the impugned order, ruled that the assessee was not guilty of furnishing incorrect particulars.

2. Learned counsel for the revenue contends that the explanation afforded could not be considered *bona fide* or the issue debatable in any circumstance which may justify the discharge of notice under Section 271(1)(c). Relying on the judgment in *CIT v. N.G. Technologies Ltd.* 2015 (370) ITR 7, learned counsel submitted that the explanation of mistake on the part of the Chartered Accountant [hereafter referred to as "the CA"] in this case was specious. It is submitted that every company is under a duty to have its account audited and the fact that the CA's services were utilised and that he made some alleged mistake did not absolve the assessee from its primary duty cast in law to reveal the correct income.

3. The ITAT in the impugned order reasoned as follows:

> *"6. A perusal of record shows that the sale of capital asset was shown in the Profit and Loss Account. The Assessing Officer also admitted that it has been shown in the Profit & Loss Account. A glance on the above provision would suggest that for being covered under explanation-I to section 271(1)(c), there has to be concealment of particulars of income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The present is not a case of concealment of income. However, the ld. DR submitted that by making incorrect claim of deduction/expenditure, the assessee has furnished inaccurate particulars of income. As per law Lexicon, the meaning of the word "particulars" is a detail or details (in plural sense); the*

details of a claim or the separate items of an accounts. Therefore, the word "particulars" used in Section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, the assessee cannot be held guilty of furnishing inaccurate particulars of income. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making a incorrect claim in law, cannot tantamount to furnishing of inaccurate particulars. In view of this discussion, and laying our hands on various decisions cited by the ld. AR, we do not find any reason to sustain the impugned order confirming the penalty. We, thus, while setting aside the orders of the authorities below, direct the AO to delete the penalty in question levied under section 271(1)(c) of the Act. The appeal of the assessee, is therefore, allowed."

4. The ITAT, we notice, took note of the Explanation 1(A) and 1(B) to Section 271(1)(c). Under Explanation 1(A), penalty would be attracted if an assessee fails to offer an explanation or offers a false explanation. Under Explanation 1(B), an unsubstantiated explanation or failure to prove that the explanation is *bona fide* attracts penalty. In this case, the narrow question is whether the explanation by the assessee that the non-reporting of income was on account of the belief held that the benefit accrued under Section 54G, on account of the advice of the CA was either a false explanation or no explanation at all [explanation 1(A)] or whether it was not bona fide [Explanation 1(B)].

5. This Court is of the opinion that the exposition made in *N.G. Technologies (supra)* has to be applied in a fact-specific manner and not in the amplitude that the learned counsel for the revenue suggests. The Court cannot be oblivious of the fact that the companies are advised by experts and CAs who, more often than not, finalise reports. To expect assessees to scan each assessment with a fine comb, as is suggested by the revenue, and thereafter be told that the explanation about its reliance upon expert advice is not *bona fide*, in the facts of this case, at least do not appeal to this Court. Being a finding of fact based upon broad probabilities, the Court is of the opinion that no substantial question of law arises.

6. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

NOVEMBER 08, 2016
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