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

\+ ITA 626/2016

THE PR. COMMISSIONER OF INCOME TAX -06 ..... Appellant

Through: Mr. Ruchir Bhatia, Advocate along with Mr. Puneet Rai, Advocate.

versus

M/S MENLO WORLDWIDE FORWARDING INDIA PVT. LTD. ..... Respondent

Through: Mr. Kamal Sawhney, Advocate along with Mr. Shekhar Garg, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **18.10.2016**

The issue urged as a question of law by the revenue in its appeal under Section 260A of the Income Tax Act, 1961 is “Whether in the circumstance of the case, the respondent/assessee could be said to have furnished inaccurate particulars so as to fall in the ambit of Section 271(1)(c) of the Income Tax Act. The assessee had for AY 2003-2004 filed the return reporting ₹ 58,53,210 crores as taxable income. Further, receipt of scrutiny notice, the assessee revised its return downwards to ₹ 3,96,23,070/-. It provided an explanation why the revision had to be undertaken; this however was not accepted by the AO. The assessee accepted the addition which was also asked to show cause under Section 271(1)(c). The assessee has seized its business operations from 01.04.2006. The penalty as proposed was levied; the assessee was unsuccessful before the CIT(A). This appeal was accepted by the ITAT in its impugned order.

The revenue contends that the revision downwards could not be justified much less satisfactorily by the assessee and under the circumstances not only the addition but even the imposition of penalty was warranted. Emphasising that the findings of the AO were concurred with and affirmed by the CIT(A), the revenue argues that the ITAT should not have disturbed those findings which were factual. This court notices that the circumstances of the case are peculiar in that the assessee provides the income downwards after receipt of scrutiny notice. It also offered an explanation as to the unavailability of material to substantiate the revision which according to it was on account of over statement of net income. Ordinarily, the assessee's upon receipt of scrutiny of the revised revision, the returns upwards in which case the revenue could be justified in assuming that an attempt to conceal the material fact was made. In the present case, the inability of the assessee to substantiate its downward revision- for which the explanation offered was the absence of books on account on cessation of its business operations was deemed not satisfactory. The ITAT reasoned as follows:-

> *"13. We have perused all the documents on record and heard both the sides. The CIT(A) while confirming the penalty imposed by the Assessing Officer, has over looked the facts that the assessee has filed revised return when the assessee company itself came to the knowledge that there*

was an error in its return for A.Y. 2003-04. The fact that company has at no stage hidden or intentionally acted which shows that they have deliberately filed the inaccurate, inadequate returns u/s 271(1) (c). If there is any inaccurate particulars of income furnished with intention then that has to be penalized but in present case, there was no such intention in the present case: The CIT(A)'s finding that the assessee is guilty of furnishing inaccurate particulars of income is inappropriate as the Assessing Officer at any point of time has not scrutinized 2003-2004 of the assessment on records and issued any notice before the filing of revised return. Thus, when the error was known to the assessee, the assessee itself has filed the revised return. This act shows that it is not intentional furnishing of inaccurate particulars of income on behalf of the assessee. The case laws placed before us are also in support of the assessee's case. Hence, the grounds of assessee's appeal are allowed and the Revenue's appeal does not sustain."

We only concur with the ITAT opinion and are of the view that no substantial question of law arises.

As far as the other issues are concerned, the court notices that the tax effect is very negligible i.e. about ₹ 1 lakh so the appeal is therefore, dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

OCTOBER 18, 2016
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