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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ ITA 425/2016

PR. COMMISSIONER OF INCOME TAX 9 ..... Appellant
Through: Ms. Lakshmi Gurung, Advocate.

versus

TDT COPPER LTD ..... Respondent
Through

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE NAJMI WAZIRI

ORDER

% **22.07.2016**

CM No. 25602/2016 (Exemption)

1. Allowed subject to all just exceptions.

CM No. 25601/2016 (Condonation of delay)

2. For the reasons stated in the application, the delay in filing the appeal is condoned.

3. The application is allowed.

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4. This appeal of the Revenue is directed against the order dated 23rd September, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2411/Del/2006 for the Assessment Year ('AY') 2000-01. This is an appeal on issue of penalty.

5. In the quantum proceedings the Assessing Officer ('AO') by an order dated 11th June 2003 disallowed the following deductions claimed by the Assessee:

a. Foreign exchange fluctuation loss;
b. Fee paid to the Registrar of Companies;
c. Repairs and maintenance expenses; and
d. Prior period expenses.

6. The disallowance by the AO of the above deductions was upheld by the Commissioner of Income Tax (Appeals) [CIT(A)] in the quantum proceedings by an order dated 27th February, 2004.

7. In the penalty proceedings the AO by order dated 30th March 2005 imposed on the Assessee a penalty of 100% of the tax sought to be evaded, i.e., Rs. 62,09,206/-. The Assessee's appeal was allowed by the CIT (A) by an order dated 21st April, 2006 and the penalty was deleted. The CIT(A) held that the claims of the Assessee came to be disallowed due to a difference of opinion on the allowability of the deductions. Significantly, the CIT(A) observed that the Assessee had suffered huge losses and in the return of income for the AY in question showed a loss of Rs. 11,97,50,110/-. Even the assessed loss, as determined by the AO, was as high as Rs. 10,35,22,302/-. In the circumstances, the CIT(A) concluded that it could not be said that the Assessee intended to avoid or evade income tax by making the above claims.

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8. The above view of the CIT(A) in the penalty proceedings has been concurred with by the ITAT in the impugned order dated 23rd September, 2015.

9. Having heard the learned counsel for the Revenue and having perused Section 271(1)(c) read with the Explanation and the decision of this Court dated 4th February 2016 in ITA No. 439/2003 (***Roger Enterprises P. Ltd. v. Commissioner of Income Tax Delhi***), the Court is not persuaded to hold that the concurrent findings of the CIT(A) and the ITAT on the non-applicability of the imposition of penalty suffers from any perversity or gives rise to any substantial question of law.

10. The appeal is dismissed.

S.MURALIDHAR, J

NAJMI WAZIRI, J

JULY 22, 2016
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