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

+ ITA 647/2016

PRINCIPAL COMMISSIONER OF INCOME TAX - 16

..... Appellant

Through: Mr. Sanjay Kumar, Jr. Standing Counsel
with Mr. Vikrant A. Maheshwari, Advocate.

versus

M/S VINOD RAJ & CO.

..... Respondent

Through: Mr. Aseem Chawla with Mr. Manu K.
Giri, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **14.03.2017**

The question of law urged by the Revenue in this case is “whether the penalty deleted by the Income Tax Appellate Tribunal (ITAT) was based upon an erroneous appreciation of the facts.”

The relevant and necessary facts are that after the conclusion of search on 25.02.2003 in the assessee's premises, it was asked to file block returns, which it did, declaring undisclosed income to the tune of ₹21,36,111/-. The Assessing Officer completed assessment and returned at ₹2,92,43,457/- thus adding ₹2,71,07,346/-. To put together with the disclosed figure, the total determined income was

₹2,92,43,457/-. One head was G.P. addition of ₹50,01,857/- on estimation of 4.4% gross profit towards unaccounted purchase. The other was peak credit of ₹2,42,41,600/-. These additions became final; thereafter, the CIT (A) reduced the GP estimation from 4.4% to 2.39% - which was corrected by the ITAT in the quantum proceedings. The ITAT restored the AO's decision @ 4.40% of the G.P. rate. The assessee accepted the findings of the ITAT in the quantum proceedings. The AO proceeded to levy penalty on the basis of the addition made on the ground of enhanced GP rates. The CIT (A) and the ITAT have concurrently granted relief to the assessee.

The Revenue urges that having regard to the express language of Section 158BFA (2), especially the second proviso thereof, in the circumstances, the ITAT could not have deleted the penalty.

The Court is of the opinion that besides the fact that the findings are concurrent, the ITAT's reasoning is sound. Section 158BFA reads as follows: -

“(1) Where the return of total income including undisclosed income for the block period, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997, as required by a notice under clause (a) of section 158BC, is furnished after the expiry of the period specified in such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of 38[one] per cent of the tax on undisclosed income, determined under clause (c) of section 158BC, for every month or part of a month comprised in the period commencing on the day immediately

*following the expiry of the time specified in the notice, and -
(a) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or*

(b) where no return has been furnished, on the date of completion of assessment under clause (c) of section 158BC.

(2) The Assessing Officer or the Commissioner (Appeals) in the course of any proceedings under this Chapter, may direct that a person shall pay by way of penalty a sum which shall not be less than the amount of tax leviable but which shall not exceed three times the amount of tax so leviable in respect of the undisclosed income determined by the Assessing Officer under clause (c) of section 158BC :

Provided that no order imposing penalty shall be made in respect of a person if—

(i) such person has furnished a return under clause (a) of section 158BC;

(ii) the tax payable on the basis of such return has been paid or, if the assets seized consist of money, the assessee offers the money so seized to be adjusted against the tax payable;

(iii) evidence of tax paid is furnished along with the return; and

(iv) an appeal is not filed against the assessment of that part of income which is shown in the return:

Provided further that the provisions of the preceding proviso shall not apply where the undisclosed income determined by the Assessing Officer is in excess of the income shown in the return and in such cases the penalty shall be imposed on that portion of undisclosed income determined which is in excess of the amount of undisclosed income shown in the return.”

A plain reading would show that the penalty is leviable under

Section 158BFA. The first proviso contains four situations. All of them contemplate the filing of a return in block proceedings and the disclosure of income that was hitherto not revealed in the original proceedings. The second proviso applies only where the income disclosed during the block proceedings is exceeded in the final assessment proceedings, by an objective determination. In the facts of this case, the Revenue has in fact accepted the undisclosed income revealed by the assessee @ ₹21,36,111/-. All that it has done is that it has enhanced the amount to ₹50,01,857/- by applying a G.P. rate of 4.4% on estimate basis. Now, this is more of a derived or inferred income based upon estimation and not on the basis of the material seized or materials that can be deduced from the documents etc. so seized.

For the foregoing reasons, the Court is of the opinion that in the circumstances of the case, the interpretation given by the ITAT to Section 158BFA (2) does not call for interference; it is reasonable. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

MARCH 14, 2017
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