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

\+ ITA 891/2016, CM APPL. 45970/2016 (delay)

THE PR. COMMISSIONER OF INCOME TAX-6..... Appellant

Through Mr. Ruchir Bhatia, Sr. St. Counsel and Mr. Puneet Rai, Jr. St. Counsel.

versus

MENLO WORDLWIDE FORWARDING INDIA PVT. LTD.
..... Respondent

Through None.

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

O R D E R

% 10.01.2017

1. The question of law urged by the Revenue in this appeal under Section 260A of the Income Tax Act, 1961 is whether the direction to delete the penalty in the circumstances of the case is justified. The AO had *inter alia* held that certain amounts ought to have been deducted by virtue of Section 194J and non compliances of which, resulted in an adverse order and disallowance under Section 40(a)(i) of the Income Tax Act. Consequent to this disallowance, penalty proceedings were initiated culminating in an adverse order. The main disallowance was carried in appeal to the CIT(A) who granted the relief. The ITAT confirmed that order. It is pointed out by the

Revenue, at the outset, that its appeal against the deletion of disallowance is pending on the file of the Court.

2. The present proceedings emanate out of the penalty imposed by the AO. The CIT(A) took note of the same in the intervening period as well as of the judgment of the Supreme Court in *K.* C. *Builders* v. *ACIT* [2004] 265 ITR 562 (SC) and deleted the penalty. The ITAT has confirmed that order.

3. As is evident from the factual narrative, the primary question of disallowance itself was debatable – in appeal to the ITAT the assessee was successful. In the circumstances, the deletion of the penalty by the CIT(A) and the ITAT cannot be called unreasonable, justifying interference by this Court. Therefore, no substantial question of law arises. The appeal is dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 10, 2017/acm