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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 825/2016

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-I

..... Appellant

Through: Mr. Dileep Shivpuri, Sr. Standing
Counsel with Mr. Sanjay Kumar, Jr. Standing
Counsel.

versus

M/S SHEELA FOAM (P) LTD.

..... Respondent

Through: Mr. Gaurav Jain with Ms. Bhavita
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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28.02.2017

The question of law sought to be urged relates to the issue of tenability of the impugned order of the ITAT inasmuch as it has deleted the penalty imposed and upheld by the lower authorities.

The assessee had for the concerned assessment year claimed 100% deduction under Section 80 IB for two units. During the course of assessment, the assessee sought to correct this by pointing out that it was eligible for only 30% deduction rather than 100%. However, in view of the judgment of the Supreme Court in *Goetze (India) Ltd. vs CIT 284 ITR 323 (SC)*, the AO rejected the claim stating that the revised returns could not be entertained; he proceeded to grant only

30% deduction in accordance with law. He concurrently initiated penalty proceedings and imposed penalty under Section 271 (I) (C). In a similar vein, the AO also imposed penalty in respect of the reallocation of expenses while completing the assessment, computing deduction and imposing penalty.

The ITAT's reasoning was that the assessee had made a claim for 100% deduction *bona fide*, based upon the auditor's computation. It cited and relied upon the ruling of the Supreme Court in *Price Waterhouse Coopers Private Limited v. Commissioner of Income Tax*, 348 ITR 306 (SC). This Court is of the opinion that no substantial question of law arises in this case. Admittedly, the assessee was eligible and did claim 100% deduction for the previous five years and in accordance with the relevant provisions was entitled to 30% deduction only from the year in question, i.e., AY 2004-05. The explanation offered by it, i.e., that the returns were based upon the auditor's report, in the circumstances, is plausible and credible. The ITAT, therefore, was not unreasonable in its findings. Likewise, the redistribution of the expenses and the automatic imposition of penalty by the AO were not justified as concluded by the ITAT.

No question of law arises. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

FEBRUARY 28, 2017/vikas/

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