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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 910/2016

THE PR. COMMISSIONER OF INCOME TAX-6 Appellant
Through: Mr. Ruchir Bhatia, Sr. Standing Counsel
with Mr. Puneet Rai, Jr. Standing Counsel.

versus

MOHAN EXPORTS INDIA PVT. LTD. Respondent
Through: Mr. V.P. Gupta, Advocate.

CORAM:

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

ORDER

16.01.2017

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The Revenue is aggrieved by an order of the Income Tax Appellate Tribunal ("ITAT") which affirmed the findings of the Appellate Commissioner on the question of penalty imposed upon the assessee on two counts. It is contended that having regard to the mandatory nature of the obligation imposed upon the assessee not only to disclose the material facts but also reveal the necessary disallowance and follow other provisions of law, the penalty in the circumstances of the case was justified.

The Assessing Officer had imposed penalty on two counts, i.e., not offering any amount under Section 14A as well as disallowance under first explanation to Section 37 (1) of expenditure in the nature of penalty paid to the Delhi Development Authority ("DDA") upon a composition. The record would show that so far as the first

disallowance under Section 14A is concerned, the AO had added amounts under Rule 8D(2) (ii) and (2) (iii) of the Income Tax Rules. The CIT (A) deleted the amount added under Rule 8D (2) but sustained the other additions which were also affirmed by the ITAT. Both the CIT (A) and the ITAT were of the opinion that having regard to the circumstances that Rule 8D was applicable from the assessment years in question, i.e., AY 2008-09 and further unsettled the position of law having regard to the judgments of the Court, the assessee could not be faulted. Learned counsel contends that regardless of the interpretation of Rule 8D, the primary obligation to make disallowance lay upon the assessee by virtue of Section 14A. With respect to the latter, it is contended that mere disclosure of facts is not sufficient and that noting fully well the Explanation to Section 37 (1), the expenditure could not have been claimed, which was by deliberation and, therefore, warranted penalty in the circumstances. Learned counsel relies upon *CIT v. Zoom Communications Pvt. Ltd.* (2010) 327 ITR 510 (Del.) as well as *CIT v. N.G. Technologies* 370 ITR 7. The ITAT upheld the CIT (A)'s order which had primarily deleted the penalty by the following reasons: -

“7.1 After going through the aforesaid finding of the Ld. CIT (A) on the issue in dispute as well as the orders of the Hon’ble Delhi High Court in the case of Maxopp Investment Ltd. (2011-TIOL-753-HC-Del-IT) and the Hon’ble Supreme Court of India decision in the case of Reliance Petro Products P Ltd., reported in 322 ITR 158 (SC), relied upon by the Ld. CIT (A) while deleting the penalty in dispute, we are of the view that the Ld. First Appellate Authority has passed a well reasoned order, because the assessee has paid taxes on the issue of

disallowance u/s. 14A and assessee has not concealed the facts nor any inaccurate particulars filed. We find that the AO had made addition of these information filed in the Tax Audit Report and the assessee has disclosed all the facts in the Tax Audit Report in Form No.3CD under section 44AB of the I.T. Act. Therefore, Ld. CIT (A) has rightly deleted the penalty in dispute, which does not need any interfere on our part. Hence, respectfully following the precedents of the Hon'ble Delhi High Court and the Hon'ble Supreme Court of India, as aforesaid, we uphold the order of the Ld. CIT (A) wherein the Ld. CIT (A) has deleted the penalty in dispute and accordingly, we dismiss the Appeal filed by the Revenue.”

This Court is of the opinion that the ITAT's impugned order which has relied upon *CIT v. Reliance Petroproducts Pvt. Ltd.* 2010 (322) ITR 158 (SC) cannot be faulted in the peculiar circumstances of the case. As far as the first disallowance under Section 14A is concerned, the reasoning of the CIT (A) (endorsed by the ITAT that the position in law was in a state of flux and the benefit of doubt could be given to the assessee), is sound. With respect to the disallowance under Section 37 (1), here too, we notice that the CIT (A) had granted relief but that order was set aside by the ITAT. Having regard to these peculiar facts, penalty under Section 271 (1) (c) could not have been imposed.

No substantial question of law arises; the appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

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