O-65

ITA/581/2008

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX,
KOLKATA - II

-Versus-

MESSERS HINDUSTHAN COPPER
LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 7h February, 2023

Appearance :
Mr. Tilak Mitra, Adv.
...for the appellant.

Mr. J.P. Khaitan, Sr. Adv.
..for the respondent.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 24th January, 2008 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA No.2424/Kol/2007 for the assessment year 2004-05.

The appeal was admitted on the following substantial question of law for consideration :

(i) *Whether on the facts and circumstances of the case the Income Tax Appellate Tribunal was justified in law in deleting the penalty of Rs1,06,18,300/- imposed under Section 271(1)(c) by ignoring the provisions of Explanation 4(a) to Section 271(1)(c) which was amended by Finance Act, 2002, with effect from 1st April, 2003?*

We have heard Mr. Tilak Mitra, learned standing counsel for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel for the respondent/assessee.

The only question which arises for consideration in this appeal is whether the Tribunal was justified in levying penalty on the assessee under Section 271(1)(c) of the Act. It is well-settled that in order to levy penalty under the said provision it should be shown that the assessee had deliberately concealed the facts and furnished inaccurate particulars. The CIT (Appeals) took note of the factual position and found that the amount represented the undisbursed sum relating to the voluntary retirement scheme floated by the respondent/assessee and the sums which were paid by the Government to the respondent/assessee to implement the said scheme. On facts it was found that no inaccurate particulars of income was furnished by the assessee and the asseessee's accounts were audited and the undisbursed sum relating to the *Voluntary Retirement Scheme* was duly included under the head "Current

Liabilities and Provisos In The Accounts". Further, this fact was also noted in the notes of accounts. Thus the CIT (Appeals) held that penalty cannot be imposed. When the revenue carried the matter on appeal to the Tribunal the appeal was dismissed on the ground that the tax effect involved in the case is less than Rs.2 lakhs and it being a lost case, dismissed the appeal. In any event, the findings recorded by the CIT (Appeals) after noting the factual position remains unassailed. There is no allegation that the assessee had furnished inaccurate particulars, more so, when the assessee was audited and the undisbursed sum was duly included under the head "Current Liabilities and Provisos In The Accounts" and the same fact were also reported in the notes of accounts. Thus CIT (Appeals) was fully justified in allowing the assessee's appeal and no such grounds have been made by the revenue to set aside such findings. For such reason the appeal filed by the revenue is dismissed on the above ground and the substantial questions of law is answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/sg/GH/S.Pal