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

\+ ITA 788/2019 & CM No. 39009/2019 (condonation of delay of 151 days in re-filing)

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

Through: Mr. Ruchir Bhatia, SSC.

versus

MORADABAD TOLL ROAD COMPANY LTD. ..... Respondent

Through: Ms. Madhu Sweta and Mr. Yash Kapoor, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **19.03.2024**

1. The Commissioner seeks to impugn the order of the Income Tax Appellate Tribunal ["**ITAT**"] dated 27 September 2018 and has proposed the following questions of law for our consideration:

> "2.1 Whether on the facts and circumstances of the case, ld. ITAT erred in deleting the penalty of Rs.2,41,56,197/- imposed by Assessing officer under section 217(1)(c) of the Income Tax Act,1961 ignoring the fact that Assessee had furnished inaccurate particulars of its income?
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> 2.2 Whether on the facts and circumstances of the case and in law, the ld. ITAT is justified in deleting the penalty under section 271(1)(c) of the Income tax Act,1961 imposed by the Assessing officer, without considering the entire factual matrix and also without taking into consideration provision of explanation 1 to section 271(1)(c) of the Income Tax Act 1961?
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> 2.3 Whether on the facts and circumstances of the case and in law, the ld. ITAT is justified in deleting the penalty under section 271(1)(c) of the Income Tax Act,1961 imposed by the Assessing officer without considering the fact that the assessee has made a

claim which is incorrect in law and the explanation of the assessee is neither substantiated nor shown to be bonafide?"

2. Undisputedly, the quantum assessment proceedings have attained finality right up to the dismissal of the appeals before this Court. The only question which is now sought to be canvassed pertains to the levy of penalty under Section 271(1)(c) of the Income Tax Act, 1961 ["**Act**"].

3. The ITAT while dealing with the aforesaid question has observed as under:

> "**7.** On careful consideration of the matter, we find that assessment was completed at loss of Rs. 2,83,53,768/- against the returned loss of Rs. 10,02,63,570/- by disallowing the depreciation to the tune of Rs. 7,16,79,068/- on account of excessive depreciation and Rs. 86224/- on account of internal and tax audit fees for non deduction of TDS u/s. 40(a) of the Act and AO imposed the penalty of Rs. 2,41,56,197/- u/s. 271(1)(c) of the Act. We find that there is only the application of law as to the depreciation and other disallowance on which no penalty should be maintained. We further note that instead of carry forward loss the action of the AO allows the carry forward of the depreciation. Therefore, all the particulars on which the assessee claimed the depreciation were furnished alongwith return of income and it is not the case of the Revenue that any new facts were unearthed during the assessment proceedings so that a reasonable conclusion could be drawn that the assessee either concealed income or furnished inaccurate particulars of income. It is only a question of allowing the depreciation in this year or next year. As a matter of fact if the depreciation is not allowed this year the same will be carried forward and if depreciation is allowed, the loss will be carried forward. In these circumstances, we are of the considered opinion, that there is no element of concealment of income or furnishing of inaccurate particulars of income and the assessee does not stand the gain by claiming depreciation at a higher rate this year. We further find that as regards furnishing of inaccurate particulars, no information given in the return was found to be incorrect or inaccurate. We further find that section 271(1)(c) postulates imposition of penalty for furnishing of inaccurate particulars and concealment of income. Therefore, the assessee has not at all concealed any particulars of such income and has also not furnished inaccurate particulars of income. To these facts, the decision of the Apex Court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR-158 (SC) is directly

applicable here wherein, the Hon'ble Supreme Court has held that merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue that by itself would not attract the penalty under section 271(1)(c).

8. In the background of the aforesaid discussions and respectfully following the precedent, as aforesaid, we are of the considered view that the assessment has neither concealed the income nor furnished inaccurate particulars of income and there are no findings of the Assessing Officer and the CIT (Appeals) that the details furnished by the assessee in his return are found to be incorrect or erroneous or false. Under these circumstances, in our view the penalty in dispute is totally unwarranted and deserves to be deleted. Accordingly, we delete the penalty of Rs. 2,41,56,197/- made u/s. 271(1)(c) of the LT. Act and quashed the orders of the authorities below on the issue."

4. Having gone through the same and on hearing learned counsel we find that the appellants have failed to establish that the aforesaid conclusions and the view as taken would give rise to any substantial question of law.

5. The appeal fails and shall stand dismissed along with any pending application.

YASHWANT VARMA, J

PURUSHAINDRA KUMAR KAURAV, J

MARCH 19, 2024/kk