

IN THE HIGH COURT OF DELHI AT NEW DELHI 17.08.2009

Present: Ms. Prem Lata Bansal, Advocate with Mr. Paras Chaudhry, Advocate and Ms. Anshul Sharma, Advocate for the appellant. Mr. Salil Aggarwal, Advocate with Mr. Parkash Kumar, Advocate for the respondent.

I.T.A. No. 534/2006 M/S DEEKSHA HOLDING LTD
The Assessing Officer while making assessment passed assessment order dated 16.10.2000 for the assessment year 1998-99 made, inter alia three additions to the income of the assessee which are as under:-

- (a) A sum of Rs.1,47,901/- was added on account of short term capital gain which worked out on the sale of cars
- (b) Disallowance of expenditure of Rs.6,86,436/- which was given by the assessed under the head Professional Development Expenses.
- (c) Disallowance of expenses to the tune of Rs.12,26,000/- under the head Advertisement.

While doing so, the Assessing Officer also initiated the penalty proceedings against the assessee under Section 271(1)(c) of the Income Tax Act and passed penalty order dated 30th October, 2001. This order was upheld by the C.I.T.(A), however, the Tribunal has set aside the penalty order stating that there was no concealment of income or furnishing of inaccurate particulars.

We may note that the three additions which were made by the Assessing Officer were in the following manner:

5. While going through the computation of income it has been noticed that the assessee excluded Rs.2,69,680/- under the head Profit and Sale of Cars for separate consideration. However, under the head capital gain assessee declared long term capital loss amounting to Rs.20,48,642/- in respect of imported cars only. Profit in respect of others six cars have not been declared. Short term capital gain on these cars works out at Rs.1,47,901/- which is added back to the income of the assessee under the head Capital Gain.

6. While going through the P and L Account, it is seen that the assessee has debited Rs.6,86,436/- under the head Professional Development Expenses. The assessee was asked to explain the nature of these expenses. The assessee vide letter dated 26.09.2000 has submitted that. The Company has sponsored its director for post graduation course abroad in the field of law. She is helping the company in various legal matters and he is providing her the best expertise obtained by her in the above field for the purpose of the business. From the above it is clear that the assessee company only sponsored its Director Ms. Divya Suri for post graduation

course abroad which is not in any way related to its business. The reply given is vague and unsubstantiated. It is to be noted that during the year legal and professional expenses has been doubled this year. The assessee has neither filed any details of this tour nor any documentary proof in respect of business necessity of this expenses. As the assessee is failed to file any nexus between this foreign tour and the business of the assessee the same is treated as purely non business of its director. Hence, the expenses amounting to Rs.6,86,436/- are disallowed and added back to the income of the assessee.

7. The assessee company has debited Rs.12,26,000/- under the head Advertisement. Since, assessee's source of income is mainly interest on tax free bond, dividend income and rental income assessee was asked to explain why such heavy expenses has been incurred in advertisement and how the expenses is related to the business of the assessee. The assessee vide reply dated 26.09.2000 has submitted that the advertisement expenses have been incurred for the purpose of business promotion. The reply filed by the assessee is vague. Moreover, the assessee has not filed any explanation how the advertisement expenses are related to the business of the assessee. Further, the assessee has separately claimed expenses of Rs. 1,19,446/- under the business promotion expenses. Apparently, the payment has been made to an associate concern which publishes an afternoon tabloid.

In respect of first addition, explanation of the assessee was that though the assessee had excluded Rs.2,69,680/- under the head profit and sale of cars, capital gains in respect of sale of these cars was not included by inadvertence likewise in respect of claim of deduction of expenses under the head Professional Development Expenses was that the expenses were in fact incurred for sponsoring its director for post graduation course etc. in the field of law and it was the bona fide claim made by the assessee. Same was the plea in respect of advertisement expenses.

The Income Tax Appellate Tribunal while accepting these contentions of the assessee has recorded as under:

9. We have heard the rival submissions and perused the orders of both the lower authorities. From the order of the Assessing Officer, we find that the Assessing Officer has disallowed the expenses on professional development Rs.6,86,436/- advertisement expenses Rs.12,26,000/-, as the same did not relate to the business of the assessee. The Assessing Officer had made addition of Rs.1,47,901/- on account of capital gain on sale of six cars which was accepted by the assessee as its mistake. We also observe that the Assessing Officer had disallowed the claim of expenses of Rs.3 lakhs as the same could not be allowed as deduction against the tax free income of assessee. We also observe that in the assessment order framed the Assessing Officer had not recorded and finding to the effect that the assessee had filed inaccurate particulars of his income or had

concealed its income. The Hon'ble Delhi High Court in the case of CIT Vs. Ram Commercial Enterprises Ltd., 2/6 ITR 568, in the case of CIT Vs. Super Metal Re-roller, 265 ITR 82, and in the case of CIT Vs. B.R.Sharma, 275 ITR-303, has held that before initiating penalty proceedings, the Assessing Officer must record his satisfaction regarding concealment of income or filing of inaccurate particulars of income by the assessee in the assessment order. We find that in the instant case no such satisfaction has been recorded by the Assessing Officer in the assessment order and, therefore, the penalty proceedings are not valid. Further, we find that the Assessing Officer has disallowed the claim of expenses by the assessee on the ground that they are not incurred for the purpose of the assessee or that they have been claimed against income which are exempt from Income-tax. The Assessing Officer in the penalty order has observed that the assessee accepted the addition made by the Assessing Officer and did not prefer appeal before the CIT (A) against the additions made by the Assessing Officer. He, therefore, levied penalty on the ground that the assessee had filed particulars of income and concealed its income.

It is trite law that the assessment proceedings and penalty proceedings are separate proceedings and are distinct and independent of each other. In the penalty proceedings, the Assessing Officer has to show that the additions made to the income of the assessee are in fact the income of the assessee. Thus, in the penalty proceedings the Assessing Officer has to bring on record some further material to demonstrate that the assessee had concealed its income.

The decision of the Hon'ble Delhi High Court in the case of CIT Vs. Chetan Das Laxman Das, 214 ITR 726, and CIT Vs. J.K. Synthetics Ltd., reported in 219 ITR 267, are on this proposition. Further, the Chandigarh bench of the Tribunal in the case of H.P. State Forest Corporation Ltd. Vs. Dy.CIT 93 ITD 422, has hold that the word 'conceal' means to hide or to withhold or not to disclose. This requirement some positive action on the part of the person concerned.

Where the assessee had disclosed all the facts before the Assessing Officer and the Assessing Officer, on consideration of the evidence furnished by the assessee, come to the conclusion that the claim has not been substantiated with sufficient evidence, does not automatically result in levy of penalty. Where the assessee has disclosed all material facts in regard to the claim made, the onus placed upon the assessee stood discharged. In the instant case, the assessee had disclosed all the particulars of income. The Assessing Officer disallowed the expenses claimed on the ground that they were not incurred for the business purpose of the assessee and that they have been claimed against exempted income. Thus, it cannot be held that the assessee has filed inaccurate particulars of income or had concealed its income. Thus, the penalty cannot be levied for this reason also. We also observe that the expenses claimed by the assessee have not been found by the Assessing Officer as bogus or false.

Thus, the genuineness of the expenses incurred by the assessee has not been doubted by the Assessing Officer and, therefore, the penalty cannot be levied on the assessee still further, the assessee explained that it was due to genuine mistake that it omitted to show the capital gain of Rs.1,47,901/- on the sale of six cars and that as soon as it was pointed out, the same was accepted by the assessee.

In this context, the Ld. A.R. of the assessee, by referring to the order of the Hon?ble Supreme Court in the case of CIT Vs. Suresh Chand Mittal, 251 ITR 09, submitted that it has been held that where the department has not discharged its burden of proving concealment and has simply rested its conclusion on the act of voluntary surrender done by the assessee in good faith, the penalty could not be imposed. Hence, for the reasons given in the foregoing, we set aside the order of the CIT (A) and the Assessing Officer and delete the penalty of Rs.8,26,160/-

We are of the opinion that no question of law arises in these circumstances.

Dismissed.

A.K.SIKRI, J
VALMIKI J.MEHTA, J

August 17, 2009