

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

**06.07.2009**

**Present: Mr. J.R. Goel, Advocate for the appellant.**

**Mr. Ajay Vohra, Advocate with Ms. Kavita Jha and Ms.**

**Akansha Aggarwal, Advocates for the respondents.**

**ITA No.791/2005 M/S BALKA SERVICES P.LTD.**

During the assessment year 2001-02 (equivalent to accounting year 2000-01) one company, namely, M/s. Bhagwan Dass Agro Industries Private Limited was merged with the assessee company pursuant to the order passed by the Company Judge of this Court on 14th March, 2000 in the merger petition filed by the said company under Sections 391-394 of the Companies Act. This merger was made effective from 01.04.2000. M/s. Bhagwan Dass Agro Industries Private Limited had incurred certain losses. In the income tax return filed for the assessment year 2001-02 the assessee declared these losses suffered by M/s. Bhagwan Dass Agro Industries Private Limited in its income return for its absorption and claimed benefit under Section 72(A) of the Income Tax Act. It is not in dispute that the assessee had stated all the aforesaid facts in the income tax return including the fact that M/s. Bhagwan Dass Agro Industries Private Limited had merged with the assessee company and was no more in existence. The Assessing Officer found that in such circumstances, more particularly when the assessee company was not an industrial company, benefit under Section 72(A) of the Income Tax Act cannot be given and therefore deleted the items of loss shown in the income tax return. At the same time Assessing Officer initiated proceedings under Section 271(1)(c) of the Income Tax Act, 1961 and imposed penalty of Rs.17,69,045 alleging that assessee company had furnished inaccurate particulars of its income amounting to Rs.42,15,081/- (which was the loss of the merging company). This penalty was upheld by CIT (Appeals) however, the ITAT in further appeal carried by the assessee has quashed the penalty proceedings. It is not in dispute that while passing the assessment order no satisfaction was recorded as to whether there was submitting of inaccurate particulars and concealment of assessee in this appeal even on merits. We are of the opinion that ITAT rightly pointed out that all the relevant facts and figures pertaining to its claim on account of brought forward losses of the merging company were specifically given by the assessee in its computation of income filed alongwith return of income and therefore, there was no concealment of particulars. It is a different matter that on the basis of those particulars furnishing the assessee authority came to the conclusion that the assessee was not entitled to the benefit of the provisions of Section 72(A) of the Income Tax Act and therefore, the benefit was not given accorded to the assessee. However, that in itself would not entitle imposition of penalty under Section 271(1)(C) of the Act as there was neither any concealment of

**particulars of income by the assessee or furnishing inaccurate particulars of such income. We therefore, are of the opinion that no question of law arise in this appeal and is therefore dismissed.**

**A.K.SIKRI,**

**VALMIKI J.MEHTA**

**July 06, 2009**

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**#13 and 14**