

IN THE HIGH COURT OF DELHI AT NEW DELHI

18.08.2008

Present : Ms. Premlata Bansal, Advocate for the Appellant.

ITA No.942/2008 : Banarsi Lal Passi.

This appeal is directed against the order dated 31.10.2007 passed by the Income Tax Appellate Tribunal in respect of penalty proceedings initiated with regard to the assessment year 1997-98. The Tribunal after considering the rival contentions has arrived at a finding of a fact that the assessee was under a bonafide belief that by rendering contracted services to Sumitomo Corporation of Japan, the assessee was eligible for deduction under Section 80-O of the Income Tax Act, 1961 (hereinafter to be referred as 'the said Act'). Although, the said contention was ultimately found to be wrong by virtue of the Tribunal's order dated 10.10.2005. The Tribunal found that there is nothing to suggest that the assessee had furnished inaccurate particulars of income or concealed its true income. It may also be noted that when the assessee had claimed deduction under Section 80-O of the said Act, the same had been disallowed by the Assessing Officer but had been allowed to the assessee in appeal by the Commissioner of Income Tax (Appeals). It was subsequently disallowed by the Tribunal by the aforesaid order dated 10.10.2005. It is in these circumstances that the Tribunal has returned the finding that at the point of time when the assessee had made the claim, the issue whether the assessee would be entitled to be claim was a debatable one. **The Tribunal also concluded that a mere difference of opinion could not entitle the Department to levy a penalty on the assessee.** We cannot find fault with the Tribunal's conclusion that the assessee had made the claim of deduction under Section 80-O of the said Act under a bonafide belief that it was entitled to such a deduction. The Tribunal has, in our view, rightly deleted the penalty under Section 271 (1) (c) of the said Act. No interference with the impugned order is called for.

No substantial question of law arises for our consideration.

The appeal is dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

August 18, 2008/sb

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