

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

% Date of decision: 3rd June, 2010

+ **ITA 732/2010**

COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Sanjeev Sabharwal, Adv.

versus

IFCI LIMITED Respondent
Through: Mrs. Kavita Jha, Ms. Akansha
Aggarwal, Advocates

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether reporters of the local papers be allowed to see the judgment? yes
2. To be referred to the Reporter or not? no
3. Whether the judgment should be reported in the Digest? no

DIPAK MISRA, CJ

In this appeal under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act'), the revenue has called in question the legal sustainability of the order dated 31st October, 2008 passed by the Income Tax Appellate Tribunal (for short 'the tribunal') in ITA 4664/Delhi/2007.

2. At the very outset, it is apposite to note that the tribunal was dealing with two appeals, one preferred by the assessee which pertained to assessment year 1996-97 and the other preferred by the revenue, i.e. ITA No. 4507/Delhi/2007 which related to assessment year 1998-99.

3. In the appeal preferred by the assessee, the only issue that emerged for consideration before the tribunal pertained to confirmation of penalty in

respect of investments written off. The said claim was disallowed by the Assessing Officer. In course of assessment proceedings, the Assessing Officer initiated a penalty proceeding under Section 271(1)(c) of the Act. The amount of investment written off was disallowed by the Assessing Officer and the same was affirmed up to the level of the tribunal.

4. In course of penalty proceeding, it was explained by the assessee that the investments were written off in the books of account and were claimed as deduction on account of loss occurred to the assessee in the computation of total income. It was urged that as the entire facts were disclosed in the return, it could not be treated as concealment of income. The stand put forth by the assessee was rejected on the ground that the assessee had made certain claims by way of business expenditure in the return but was unable to substantiate the same. Accordingly, the assessing officer imposed the penalty under Section 271(1)(c) of the Act.

5. The aforesaid order was assailed in appeal before CIT(Appeals) who affirmed the order of the Assessing Officer by expressing the view that the assessee had knowingly and deliberately furnished inaccurate particulars of income. The appellate authority expressed the view that the legislature had already by way of inserting Explanation (1B) in Section 271(1)(c) had shifted the onus from the revenue to the assessee and, therefore, it was obligatory on the part of the assessee to prove that there was no *mens rea* on his part in filing inaccurate particulars of income. It was also held that the assessee was required to prove in a bona fide manner that the addition was

not on account of concealment or furnishing of inaccurate particulars of such income.

6. Grieved by the aforesaid order, the assessee preferred an appeal before the tribunal. It was contended before the tribunal that the entire details of the claim were available in the return and it had not shown any false income or furnished any inaccurate particulars of income and hence, the imposition of penalty was unwarranted. The tribunal, as is evident from the order impugned, has held that the investment that was written off was disallowed up to the level of the tribunal and there is no dispute in that regard. The assessee had claimed the loss on account of investments written off which was not allowed by way of deduction. Thus, the assessee had declared the entire material in the return of income and merely a claim of a deduction on account of loss incurred in the capital field as revenue loss was not allowed would not make it liable for penalty for concealment of income or furnishing inaccurate particulars of such income. The tribunal referred to its earlier decision in *Nasu Properties Pvt. Ltd. v. ITO* in **ITA No. 1160 and 1161 (Mumbai) of 2006** and placed reliance on the decision in *CIT v. Indian Metals & Ferro Alloys Ltd.* [1994] 117 CTR (Orissa) 378 and expressed the view that full particulars of income were furnished by the assessee and no inaccuracy had been pointed out by the Assessing Officer in the books of account to show that the resultant factor is keeping off or hiding a portion of its income which would fall in the category of furnishing inaccurate particulars of its income. Being of this view, the tribunal has opined that there had been disclosure of all particulars of income in the

return and, therefore, the imposition of penalty under Section 271(1)(c) of the Act was not justified.

7. We have heard Mr. Sanjeev Sabharwal, learned counsel for the Appellant and Mrs. Kavita Jha and Ms. Akansha Aggarwal for the assessee respondent.

8. It is submitted by Mr. Sabharwal that a substantial question of law is involved in appeal inasmuch as the finding recorded by the tribunal is perverse inasmuch as the assessee had deliberately furnished inaccurate particulars of income by way of loss under the head "investments written off".

9. Per contra, it is contended by Mrs. Kavita Jha, learned counsel for the assessee respondent that the assessee had not withheld any income or a portion thereof from the knowledge of the Income Tax authorities, for everything was reflected in the return.

10. The singular question that emanates for consideration whether the finding recorded by the tribunal that the assessee had not furnished inaccurate particulars of the income can be treated as perverse. In this regard, we may profitably reproduce a passage from *Indian Metals & Ferro Alloys Ltd.* (supra), wherein the Orissa High Court has opined thus:

"15. If in the facts and circumstances of a particular case and on the materials before it, the Tribunal reaches the conclusion that there was no concealment and/or furnishing of inaccurate particulars, it is a conclusion on facts and no question of law arises from the order of the Tribunal in that regard. The expressions "has concealed the particulars of income" and "has furnished inaccurate

particulars of income" have not been defined either in Section 271(1)(c) or elsewhere in the Act. One thing is certain that these two circumstances are not identical in detail although they may lead to the same effect, namely, keeping off a certain portion of income. The former is direct and the latter may be indirect in its execution. The word "conceal" is derived from the latin *concelare* which implies to hide. Webster in his *New International Dictionary* equates its meaning "to hide or withdraw from observation, to cover or keep from sight ; to prevent the discovery of ; to withhold knowledge of". The offence of concealment is thus a direct attempt to hide an item of income or a portion thereof from the knowledge of the income-tax authorities. In furnishing its return of income, an assessee is required to furnish particulars and accounts on which such return income has been arrived at. These may be particulars as per its books of account, if it has maintained them, or any other basis upon which it had arrived at the returned figure of income. Any inaccuracy made in such books of account or otherwise which resulted in keeping off or hiding a portion of its income is punishable as furnishing inaccurate particulars of its income. Whether the burden of proof in a given case has been discharged on a set of facts is a question of fact. A finding of fact arrived at by the Tribunal will not be disturbed unless it is based on no material or is perverse or is based on irrelevant, extraneous or inadmissible considerations or is arrived at by the application of wrong principles of law. Change of perspective in viewing a thing does not transform a question of fact into a question of law. Whether there was concealment or not is, ordinarily, a question of fact. Where a fact-finding body bearing in mind the correct principles comes to the conclusion that the assessee has discharged the onus, it becomes a conclusion of fact. Similarly, whether the explanation offered by the assessee was bona fide or not is a question of fact."

11. In the case at hand, the assessee had filed the return and furnished all particulars. The assessee had explained during the penalty proceedings that the investments were written off in the books of account and were claimed as deduction on account of loss occurred to the assessee in the computation

of total income. The tribunal analysing the factual matrix has expressed the view that there had been no furnishing of inaccurate particulars of such income and the assessee had declared the entire material. It is a case where a claim put forth by the assessee as regards the loss was not accepted but that would not *per se* tantamount to furnishing any kind of inaccurate particulars. Thus, in our considered opinion, there has been no concealment of income or furnishing of inaccurate particulars. Hence, no substantial question of law arises for consideration in this appeal.

12. In the result, we do not perceive any merit in this appeal and accordingly it is dismissed at the stage of admission. There shall be no order as to costs.

CHIEF JUSTICE

MADAN B. LOKUR, J

JUNE 03, 2010
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