

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 15.04.2010

+ **ITA 372/2010**

THE COMMISSIONER OF INCOME-TAX ... Appellant

- versus -

JBM INDUSTRIES LIMITED ... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Sanjeev Sabharwal
For the Respondent : None

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

CM No.3837/2010

1. This appeal is delayed by 517 days. The issue that is involved in the present appeal relates to the question of imposition of penalty when the income determined is a loss. Initially, the Supreme Court had taken the view in **Virtual Soft Systems Ltd v. Commissioner of Income-tax: [2007] 289 ITR 83 (SC)** that penalty under Section 271(1)(c) could be imposed only if there was a positive income determined by the Assessing Officer in the case of a returned loss. The tribunal made the decision in favour of the assessee on 26.10.2007, following the decision in ***Virtual Soft (supra)***. The

department had accepted the said decision of the tribunal in view of the decision of the Supreme Court in *Virtual Soft (supra)*. Subsequently, after the period of limitation for filing the appeal had expired, a larger Bench of the Supreme Court reconsidered the issue in the case of *Commissioner of Income-tax v. Gold Coin Health Food Pvt. Ltd: 304 ITR 308 (SC)* and took an entirely different view. The view now taken by the Supreme Court was that when there was a loss return filed by the assessee and the Assessing Officer determined a loss, but at a reduced figure, the assessee would be liable for penalty under Section 271(1)(c) provided the conditions specified therein are satisfied. It is after the decision of the Supreme Court in *Gold Coin Health Food (supra)* that the department has woken up and has decided to file this appeal after a delay of 517 days. There is no other reason given for the delay in filing of the appeal.

2. We do not think that this is sufficient cause for condoning the delay in filing the appeal inasmuch as the order of the tribunal dated 26.10.2007 had attained finality and, that too, in view of an earlier decision of the Supreme Court. The application for condonation of delay is rejected. The appeal is dismissed.

BADAR DURREZ AHMED, J

V.K. JAIN, J

APRIL 15, 2010

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