(2006) 08 DEL CK 0089

In the Delhi High Court

Case No : ITA No. 1271 of 2006

Commissioner of Income Tax APPELLANT

Vs

International Audio Visual Co. RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Citation : (2007) 208 CTR 328 : (2007) 288 ITR 570

Hon'ble Judges : Vipin Sanghi, J;Madan B. Lokur, J

Bench : Division Bench

Judgement

1. The revenue is aggrieved by an order dated 18-5-2005, passed by the Income Tax Appellate Tribunal, Delhi Bench ""C"" in Income Tax Act

No. 4716/Del/2004 relevant for the assessment year 1989-90.

2. The assessed had claimed a deduction u/s 80HHC of the Income Tax Act in respect of dubbing rights of Hindi films, which it says, it had sold to

some foreign company. The assessing officer did not agree that it was a sale by the assessed and concluded that it was not a sale of goods or

merchandise but a receipt of royalty for transfer of dubbing rights.

3. Accordingly, he disallowed the claim for deduction u/s 80HHC of the Act. The assessing officer also initiated penalty proceedings u/s 271(1)(c)

of the Act.

4. In response to the notice for initiating penalty proceedings, the assessed reiterated that it had not concealed any income nor had it furnished any

inaccurate particulars of income and prayed that the penalty proceedings be dropped. The assessing officer rejected the contention of the assessed

and imposed penalty u/s 271(1)(c) of the Act.

5. The appeal filed by the assessed before the Commissioner (Appeals) was also dismissed. The second appeal filed by the assessed before the

Tribunal was, however, accepted and that is how the revenue is before us.

6. Having examined the record and heard learned Counsel for the revenue, we are of the opinion that there is nothing to suggest that the assessed

was in any manner trying to mislead the assessing officer. It appears that he had a bona fide belief that by selling dubbing rights to a foreign

company, he was selling goods or merchandise within the meaning of Section 80HHC of the Act.

7. The assessing officer did not agree with this contention and concluded that the payment received by the assessed was towards royalty and not

sale of goods or merchandise. The contention urged by the assessed may have been incorrect but there does not appear to be anything to suggest

that it reflected on the particulars of the income of the assessed or any concealment of his true income.

8. Under the circumstances, since there was no concealment of primary facts, it cannot be said that the assessed was liable to suffer a penalty

under the provisions of Section 271(l)(c) of the Act.

9. We do not find any error in the view taken by the Tribunal in concluding that the assessed was not liable to be penalised for raising a contention

which was not acceptable to the assessing officer. No substantial question of law arises for our consideration.

10. Dismissed.

