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(2006) 08 DEL CK 0073

In the Delhi High Court

Case No : IT Appeal No. 1271 of 2006

Commissioner of Income Tax APPELLANT

Vs

International Audio Visual RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:
Income Tax Act, 1961 — Section 271(1), 80HHC

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

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

Bench : Division Bench

Advocate : R.D. Jolly, for the Appellant;

Judgement

1. The Revenue is aggrieved by an order dt. 18th May, 2005, passed by the Tribunal, Delhi Bench "C" in ITA No. 4716/Del/2004 relevant for the asst. yr. 1989-90.

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

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

3. 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 AO rejected the contention of the assessed and imposed penalty u/s 271(1)(c) of the Act.

4. The appeal filed by the assessed before the CIT(A) was also dismissed. The second appeal filed by the assessed before the Tribunal was, however, accepted

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and that is how the Revenue is before us.

5. 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 AO. 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.

6. The AO 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.

7. 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(1)(c) of the Act.

8. 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 AO. No substantial question of law arises for our consideration.

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