(2008) 07 DEL CK 0170

In the Delhi High Court

Case No : IT Appeal No. 1167 of 2007

Commissioner of Income Tax APPELLANT

Vs

Kiranjit Foils Ltd. RESPONDENT

Date of Decision : 16-07-2008

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

Citation : (2008) 07 DEL CK 0170

Hon'ble Judges : Rajiv Shakdher, J;Badar Durrez Ahmed, J

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

1. This appeal at the instance of the revenue is against the order dated 11-12-2006 passed by the Income Tax Appeal Tribunal in IT Appeal No. 589 (Delhi) of 2006 for the assessment year 1996-97. The appeal pertains purely to the question of penalty which had earlier been imposed by the Assessing Officer to the extent of Rs.4,85,399 u/s 271(1)(c) of the income tax Act, 1961. In appeal, the Commissioner of the Income Tax (Appeals) had canceled the penalty. The revenue''s appeal before the tribunal has also been dismissed with the following observation:- 3. As is evident from the aforesaid observations recorded by the learned CIT(A) in his impugned order, the issue as to whether the interest earned by the assessee on the investment made in short term deposits with the bank prior to commencement of the business is a capital receipt or a revenue receipt was a highly debtable issue and two views were clearly possible about the allow ability of the said expenses as is apparent from the decisions of Hon''ble Supreme Court referred to in the relevant portion of the learned CIT(A)''s impugned order reproduced above. The claim of the assessee on this issue thus was based on one possible view and although the said claim was not accepted in the quantum proceedings on a difference of opinion, we are of the view that making of such claim bona fide on the basis of a possible view could not be

treated as concealment of its income by the assessee company or furnishing of inaccurate particulars of such income so as to attract the penal provisions of section 271(1)(c) as rightly held by the learned CIT(A). His impugned order cancelling the penalty imposed by the Assessing Officer u/s 271(1)(c) is, therefore, upheld and this appeal preferred by the Revenue is dismissed.

In view of the stand taken by the tribunal that two views were possible, no interference is called for in this appeal. The fact that the assessee''s quantum appeal has been dismissed by this Court, does not in any way enable us to detract from the above position noted in the tribunal''s order. Consequently, this appeal is dismissed as no substantial questions of law arises for our consideration.

