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

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\+ **ITA 290/2015**

PR.CIT-2 ..... Appellant

Through: Mr. N.P. Sahni, Senior Standing counsel with Mr. Nitin Gulati, Advocate.

versus

CONTROL AND SWITCHGEAR CONTRACTORS LTD. ..... Respondent

Through: Mr. Piyush Kaushik, Advocate.

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 24.08.2015

1. This penalty appeal by the Revenue under Section 260A (1) of the Income Tax Act, 1961 ('Act') is directed against the order dated 26th September 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2734/Del/2013 for the Assessment Year (AY') 2004-05.

2. The Respondent Assessee is engaged in the business of manufacturing of control gear and switch gear products. It filed its return of income for the relevant AY 2004-05 on 30th November 2004, declaring a total income of Rs.3,88,72,503. The return was processed on 28th February 2006 under Section 143(1) of the Act. Subsequently the case of the Assessee was re-

opened under Section 147 of the Act and a notice was issued under Section 148 on 28th February 2008.

3. During the course of re-assessment, the Assessment Officer ('AO') noted that the Respondent had in its computation of income (furnished along with return of income) shown a sum of Rs. 12,12,18,990 as capital gain, treating the cost of acquisition as nil. It was also noted that the Respondent had invested the said sum in capital gain bonds and claimed deduction under Section 54EC of the Act resulting in the chargeable capital gains being 'nil'. The following Note No.22 of the Notes to Account (Schedule 17) was appended by the Respondent:

> "22. During the year, the Company has entered into a JV settlement of all past, present and future claim/s made by the Company on the foreign collaborator, change of corporate name and outstanding agency commission. The aforesaid compensation has been received during the year/subsequent to the year end and has been reflected in the profit and loss account as an 'exceptional item."

4. That apart , Note 2 in under the computation of capital gains, read thus:

"2) The company has, pursuant to settlement agreement, received capital compensation in lieu of giving up their right under Press Note

18, which debarred the collaborator from carrying out business in India, without the permission of JV partner, and in lieu of agreeing not to use the name after an interim period i. e. to give up the benefit over a period of time, of being known in the market as a joint venture partner of TE. Such compensation is not taxable. The company has treated it as capital receipt/capital gain pursuant to Section 54EC and therefore has deposited the entire compensation in Capital Gains Exemption Scheme Bonds."

5. The AO, however, rejected the above explanation offered by the Assessee and proceeded to treat the sum of Rs. 12,12,18,990 as income chargeable to tax under the head 'profit and gains of business or profession' under Section 28 (va) (a) of the Act. The above addition was confirmed by the Commissioner of Income Tax (Appeals) [CIT (A)] by order dated 14th February 2009. The matter was carried by the Assessee in appeal to the ITAT which also confirmed the order of the CIT (A). It is stated that against the said order of the ITAT, the Assessee has filed an appeal being ITA No. 25 of 2013 in which this Court has by order dated 8th October 2013 framed a question of law.

6. In the meanwhile, the AO imposed a penalty on the Assessee under Section 271(1) (c) of the Act by order dated 21st March 2011 on the ground that the Assessee had furnished inaccurate particulars of income in respect of its claim of capital gains or receipt of capital nature. It was *inter alia* observed that the contention of the Assessee that it filed details in computation and foot note was not acceptable "due to the fact that a wrong claim will always wrong whether the information is given in the return or not". Invoking Explanation I to Section 271(1) (c) of the Act, the AO held that the added amount must be presumed to have been concealed and that the Assessee had failed to discharge its burden to show that there was no concealment.

7. The Assessee then went to appeal against the said order to the CIT (A). By the order dated 28th February 2013 CIT (A) allowed the appeal. The CIT (A) *inter alia* noted that the material facts have been disclosed by the Assessee in its return of income. The Assessee had obtained with an opinion of a lawyer to the effect that the entire receipt from its foreign collaborator (Schneider Electric Industry) would be capital receipt and not on account of transfer of any capital asset. It was noted by the CIT (A) that even in the quantum appeal, there was difference in approach between the AO and the

CIT (A) on the one hand and the ITAT on the other. The AO had sought to tax the receipt as business income under Section 28 (va) (a) of the Act whereas the ITAT observed that the sum had been received not in lieu of undertaking any negative covenant not to compete with Schneider in India since the Assessee continued to carry the same line of business. Consequently, the CIT (A) came to the conclusion that "very basis of taking the impugned amount of compensation as 'business income' of the appellant company was debatable". The order of the CIT (A) was affirmed by the ITAT by the impugned order, dismissing the Revenue's appeal.

8. Mr. N.P. Sahni, learned Senior Standing counsel for the Revenue, maintained that this was a case of the Assessee furnishing inaccurate particulars and in view of the decisions in ***MAK Data P. Ltd. v. CIT 358 ITR 593 (SC), CIT Delhi v. Zoom Communication 327 ITR 510 (Del)*** and ***CIT v. Escorts Finance Ltd. 328 ITR 44(Del)*** it must be held that the provisions of Section 271(1) (c) of the Act stand attracted.

9. Learned counsel for the Respondent Assessee on the other hand submitted that since in the Assessee's quantum appeal, a question has already been framed, that by itself was sufficient to set aside the penalty. He placed

reliance on the decision dated 5th October 2010 in ITA No. 240 of 2009 ***(CIT v. Liquid Investment &Trading Co.***), and ***CIT v. Sardar Exhibitors 2015-TIOL-1618-HC-DEL-IT.***

10. The Court finds that in the present case the order of the CIT (A) explaining why Section 271(1)(c) is not attracted in the facts and circumstances of the case merits no interference. The issue that arose for determination in the quantum appeal does appear to have been debatable as is evident from the above narration of facts. There was a reference made by the Assessee itself in the note of computation, that pursuant to the settlement agreement with Schneider, it had received compensation "in lieu of giving up their right under Press Note 18, which debarred the collaborator from carrying out business in India, without the permission of JV partners". The compensation was also "in lieu of agreeing not to use the name after an interim period i.e. to give up the benefit over a period of time of being known in the market as a joint venture partner of TE". Secondly, the Assessee armed itself with a legal opinion. These facts are sufficient to distinguish the present case from the facts in ***Zoom Communication*** (*supra*) where the Court observed that apart from a making wrong claim, the Assessee did so not on the basis of any advice given to it by an auditor or tax

expert. Even in ***MAK Data*** (*supra*), the Supreme Court held on facts that the Assessee there had no intention to declare its true income and no explanation was offered by it for the concealment of income.

11. In the facts of the present case, the Court is satisfied that no error of law was committed either by the CIT (A) or the ITAT in holding that Explanation 1 to Section 271(1)(c) of the Act was not attracted. This was not a case of an Assessee furnishing inaccurate particulars. No substantial question of law arises. The appeal is dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

AUGUST 24, 2015
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