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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

(1) INCOME TAX APPEAL No. 66 of 2005

C I T AJMER
V/S
M/S RAJASTHAN VANASPATI PRODUCT LTD

(2) INCOME TAX APPEAL No. 67 of 2005

C I T AJMER
V/S
M/S RAJASTHAN VANASPATI PRODUCT LTD

Mr. KK BISSA, for the appellant / petitioner

Mr. ANJAY KOTHARI, for the respondent

Date of Order : 23.4.2008

HON'BLE SHRI N P GUPTA, J.
HON'BLE SHRI KISHAN SWAROOP CHAUDHARI, J.

ORDER

These two appeals by the revenue are against the common judgment of the Tribunal relating to assessment years 1988-89 and 1992-93. The appeals were admitted by framing the following questions of law. The question framed in ITA No.66/2005 is as under:

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that for the assessment year 1992-93 no penalty under Section 271(1) (c) of the Income Tax Act, 1961 could be levied by holding that the explanation 4 which came into effect w.e.f. 1.4.1976 did not apply to cases where the amount of income in respect of which particulars have been concealed or incorrect particulars have been furnished has the effect of reducing loss declared in the return and the return is not converted into the return of income?"

However, since now the controversy involved in the present case is settled by the Hon'ble Supreme Court in the case of Virtual Soft Systems Limited Vs. CIT, reported in [2007] 289 ITR 83 (SC), wherein it has been held that penalty under Sec.271(1)(c) in cases prior to 01.04.2003 i.e. the amendment made in Explanation 4 (a) of the Finance Act of 2002 could be attracted only in cases where even after considering the concealed income the total income assessable would be attracting some liability of tax and consequently if even after adding the concealed income the total return remains in loss, the penalty under Sec.271(c) is not at all attracted.

In view of the judgment of the Hon'ble Supreme Court, we do not find any force in these appeals. The question as framed is answered accordingly against the revenue and in favour of the assessee and both the appeals are dismissed.

(KISHAN SWAROOP CHAUDHARI), J.

(N P GUPTA), J.

jpa/