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IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' NEW DELHI)

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER

I.T.A. No.1971 /Del/2009
Assessment year : 2005-06

DCIT,
Circle-8 (1),
New Delhi.

V.

M/s Shivalik Global Ltd.,
Unit No.11, Block No.01,
1st Floor, Tribhuan Complex,
Ishwar Nagar, N. Delhi.

Appellant)

(Respondent)

PAN /GIR/No.AABCS-7835-F

Appellant by : Shri Kishore B. Sr. DR.
Respondent by : Shri Ved Jain, C.A.

ORDER

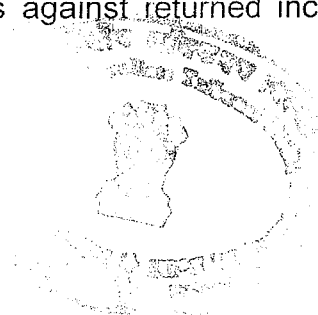
PER A.K. GARODIA, AM:

This is revenue's appeal directed against the order of Ld CIT(A)-XI, New Delhi dated 24.2.2009 for assessment year 2005-06.

2. The only ground raised by the revenue reads as under:-

"On the facts and in the circumstances of the case, the Id CIT(A) erred in law and on facts in deleting the penalty of Rs.2,10,000/- levied by the AO u/s 271(1)(c) of the IT Act, 1961."

3. Brief facts of the case are that in the present year, the AO has completed the assessment u/s 143(3) by order dated 20.12.2007 deeming the total income at Rs.2,09,24,330/- as against returned income at Rs.2,03,43,946/-. The two



additions were made by the AO by holding that the expenses incurred by the assessee on repairs is capital in nature. One addition is of Rs.3,28,496/- out of repairs of plant and machinery expenses, and the second addition is of Rs.2,51,890/- out of expenses on repairs and maintenance of building. These two additions were made by the AO by treating part expenses of repair as capital in nature and the net amount was added after allowing depreciation. The AO also initiated penalty proceedings u/s 271(1)(c) and after hearing the assessee imposed a penalty of Rs.2.10 lakhs. Against the penalty order of the AO, the assessee was in appeal before Ld CIT(A) who has deleted the penalty and now the revenue is in appeal before us.

4. Ld DR of the revenue supported the penalty order passed by the AO whereas Ld AR of the assessee supported the order of Ld CIT(A).

5. We have heard the rival submissions and have gone through the material available on record. We find that Ld CIT(A) has deleted this penalty by observing that the disallowance was made by the AO by treating part of repairs to building and plant & machinery expenses as capital and hence, it does not amount to furnishing of inaccurate particulars of income. It is also observed by him that this issue was of debatable nature and two views are equally probable and after making these observations, the Ld CIT(A) has deleted the penalty. No specific defect could be pointed out by the Ld DR of the revenue in the order of Ld CIT(A). We are in agreement with Ld CIT(A) that in the facts and circumstances of the present case, penalty is not justified because this issue is always debatable as to whether the particular repair expenses is of revenue nature or of capital nature. It was also submitted by the assessee before Ld CIT(A) that the expenses under consideration was very much of revenue nature as the items purchased as spare parts were having short span of life and these are commonly needed parts only for operating machineries. Similarly for building repairs, it was submitted that these expenses were in the nature of normal upkeep and maintenance. It was also submitted by the Ld CIT(A) that because of small amount involved, the assessee did not file quantum appeal but penalty is not

justified. Considering all these facts, we find no reason to interfere in the order of Id CIT(A) and hence, we uphold the same. This ground of the revenue is rejected.

6. In the result, the appeal of the revenue is dismissed.

7. Order pronounced in the open court on 4th December, 2009.

(GEORGE MATHAN)
JUDICIAL MEMBER

(A.K. GARODIA)
ACCOUNTANT MEMBER

Dt. 4.12.2009.

HMS

Copy forwarded to:-

1. The appellant
2. The respondent *By Hand*
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order

[Signature]
(ITAT, New Delhi).
Assistant Registrar
जायकर अपीलिय अधिकार
Income Tax Appellate Tribunal
दिल्ली पीठ, नई दिल्ली
Delhi Bench, New Delhi



