sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1118 OF 2013

The Commissioner of Income Tax-6, Mumbai ..Appellant.
V/s.
Gala Precision Technology Pvt. Ltd. ..Respondent.

Mr.Suresh Kumar for the appellant.

Mr. Atul K.Jasani for the respondent.

**CORAM : S.C.DHARMADHIKARI AND A.K. MENON, JJ.**

**DATED : 17TH MARCH, 2015**

**P.C. :-**

1. The Tribunal deleted the penalty imposed on the respondent-assessee. It is held that in Income Tax Appeal No. 6793/Mum/2010 for the assessment year 2004-05, which is an appeal of the assessee challenging the order dated 29th March, 2010 of the Commissioner of Income Tax (Appeals) he sustained the penalty of ₹10,55,021/-. The Tribunal found that the issue raised in the substantive appeal of the assessee was arguable. The co-ordinate Bench at Mumbai in Income Tax Appeal No.1417/Mum/2008 for the same assessment year set

aside the addition made by the assessing officer on which penalty had been levied and sustained. Therefore, the assessee's representative argued that the issue raised by the assessee of additional depreciation was debatable and arguable, otherwise the Tribunal would not have accepted the version of the assessee.

2. In this background, none of the ingredients of clause (c) of sub-section (1) of section 271 of the I.T. Act are satisfied nor attracted. With this finding, the appeal of the assessee against the imposition of penalty came to be allowed. This finding by itself does not raise any substantial question of law. The revenue can always impugn and challenge the finding of the Tribunal as rendered in the substantive appeal of the assessee. The revenue is not precluded from challenging that merely because the Tribunal has deleted the penalty in this case. In these circumstances, no perversity can be attributed to the Tribunal nor its order is in contravention of law. The present appeal does not raise any substantial question of law. It is, therefore, dismissed. No order as to costs.

**(A.K. MENON, J.) (S.C.DHARMADHIKARI, J.)**