sbw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2095 OF 2013

The Commissioner of Income Tax(Central) ..Appellant
-***Versus***-
M/s. Kakade Construction Company ..Respondent

....
Mr. Tejveer Singh for the Appellant.
....

CORAM: S. C. DHARMADHIKARI &
A. K. MENON, JJ.

DATE :- 23rd APRIL, 2015.

P.C.:

Having heard Mr. Tejveer Singh, the learned counsel, appearing for the revenue in support of this appeal, we have perused the order under challenge which deletes the penalty under section 271(1)(c) of the Income Tax Act, 1961.

2] The Tribunal has assigned cogent and satisfactory reasons for deletion of the penalty. It has found from the factual position that prior to the date of search, a return of income was filed and which came to be finalized. The search took place in the instant case on 11th February, 2009 but the return came to be finalized prior to 11th February, 2009. However, the assessee may not have questioned the orders in Quantum Proceedings by filing any appeal, yet, the Tribunal found that the original return of income was filed on 31st October, 2005. That was accepted by the Assessing Officer. The search took place on 11th February, 2009 and the deduction under section 80IB(10) was disallowed by the Assessing Officer on grounds not *germane* to section 271(1)(c) of the Income Tax Act. Meaning thereby, there was no material found during search based on which the disallowance was made. The disallowance was on account of non-furnishing of audit report under section 10 CCB and non-furnishing of certain details as called for by the Assessing Officer. In these circumstances, the penalty as imposed cannot be sustained. We do not find such reasoning to be perverse or vitiated by any error of law apparent on the face of the record. This appeal, therefore, has no merit. It is, accordingly, dismissed. No costs.

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

wadhwa