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

INCOME TAX APPEAL NO. 758 OF 2014

The Commissioner of Income Tax-9 .. Appellant

v/s.

M/s. Otis Elevator Co.(I) Ltd. .. Respondent

Mr. Tejveer Singh for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 15th NOVEMBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 21st August, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2007-08.

2. Mr. Tejveer Singh, learned Counsel appearing for the appellant Revenue urges the following re-framed question of law for our consideration :-

(i) Whether on the facts and in the circumstances of the case

and in law, the Tribunal was justified in holding that advances received by the assessee on dormant contracts shown under current liabilities and offered to tax in subsequent Assessment Year does not warrant imposition of penalty under Section 271(1)C of the Act?

3. The respondent assessee is engaged in manufacturing and sale of elevators / lifts. In the subject assessment year, the respondent assessee had declared an income of Rs.89.04 crores. The Assessing Officer while completing the assessment under Section 143(3) of the Act added a sum of Rs. 7.35 crores on account of advances received on dormant contracts prior to 2004. Finally, the Assessing Officer determined the taxable income of the respondent assessee at Rs.156.05 crores in his order in quantum proceedings and also initiated penalty proceedings under Section 271(1)(c) of the Act.

4. In the penalty proceedings, the respondent assessee explained that the amounts of Rs.7.35 crores shown as advances in respect of dormant contracts were in fact offered to tax in the subsequent Assessment Years 2008-09 and 2009-10. Consequently, the respondent assessee contended that no penalty under Section 271(1)(c) of the Act is imposable. However, the Assessing Officer did not

accept the above contention and imposed a penalty of Rs.2.47 crores under Section 271(1)(c) of the Act upon the respondent assessee. This for concealing income by filing inaccurate particulars.

5. Being aggrieved, the respondent assessee preferred an appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By order dated 30th June, 2011 the CIT(A) has rendered a finding of fact that the amounts received as advances in respect of dormant contracts and shown as current liability were in fact offered to tax during the subsequent Assessment Years i.e. Assessment Years 2008-09 and 2009-10 even before the proceedings for assessment of the subject assessment year i.e. Assessment Year 2007-08 were initiated in November, 2010. In fact, the CIT(A) in his order records the fact that the return of income for Assessment Years 2008-09 and 2009-10 were filed on 29th September, 2008 and 30th September, 2009 that is much before November, 2010. In these circumstances, the CIT(A) allowed the appeal of the respondent assessee and deleted the penalty of Rs.2.47 crores under Section 271(1)(c) of the Act imposed by the Assessing Officer.

6. Being aggrieved, the Revenue carried the issue of penalty in

appeal to the Tribunal. On consideration of the facts, the impugned order of the Tribunal held that the advances relating to the dormant contracts were offered to tax in the subsequent assessment years even before any inquiry was initiated by the Assessing Officer to complete the assessment for the subject assessment year. Consequently, the Tribunal held that it was not a case of concealment of income but rather the dispute was only with regard to in which year the income was taxable. In the above view, the Tribunal by the above order dismissed the Revenue's appeal.

7. We note that the basis for imposition of penalty is non-payment of tax on the amount received on dormant accounts in the subject assessment year. Both the CIT(A) and the Tribunal have rendered a finding of fact that these amounts / advances relating to dormant contracts have already been offered to tax for the subsequent assessment years i.e. Assessment Years 2008-09 and 2009-10. Moreover, both the authorities have found that the returns for Assessments Year 2008-09 and 2009-10 were filed much prior to initiation of the assessment proceedings for the subject assessment year. Merely because an addition has been made during the course of the assessment proceedings would not *ipso facto* lead to imposition of the

penalty as the condition precedent for imposition of penalty under Section 271(1)(c) of the Act is filing of inaccurate particulars of income and / or concealment of income before the penalty can be imposed. The explanation offered by the respondent assessee for not having disclosed the income on dormant contracts in the subject Assessment Year 2007-08 was that it was offered to tax in the subsequent Assessment Years 2008-09 and 2009-10 is an explanation which has been accepted by the CIT(A) and the Tribunal. In the present facts, undisputedly the income has been declared in the subsequent assessment years before the assessment proceedings for the subject Assessment Year 2007-08 was initiated. Thus, the only issue which arises is about the year of taxability of income and it is certainly not a question of concealment of income and / or filing of inaccurate particulars of income by the respondent assessee.

8. The above concurrent finding of facts as well as the acceptance of the respondent assessee's explanation by CIT(A) and the Tribunal has not been shown to be perverse. Therefore, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

9. Accordingly, the appeal is dismissed. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**