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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2425 OF 2013
WITH
INCOME TAX APPEAL NO.68 OF 2014
WITH
INCOME TAX APPEAL NO.69 OF 2014
WITH
INCOME TAX APPEAL NO.70 OF 2014
WITH
INCOME TAX APPEAL NO.82 OF 2014

Commissioner of Income Tax-Central-IV ..Appellant
Versus
M/s. Unity Chopra (Joint Venture) ..Respondent

....
Mr. Tejveer Singh for the Appellant.
Mr. Atul Jasani for the Respondent.
....

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

DATE : 25TH APRIL, 2016

P.C.:

1. These five appeals under Section 260A challenge the order dated 3rd April, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order of the Tribunal disposes of appeals for the assessment years i.e. A.Ys. 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09 resulting to these five appeals.

2. The Revenue urges the following question of law for our consideration:-

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the penalty levied under Section 271(1)(c) of the Act, 1961 when assessee has willfully filed inaccurate particulars of income?"*

3. The respondent-assessee is in the business of infrastructure development. For all the subject assessment years the respondent-assessee had claimed deduction under Section 80IA of the Act. The respondent-assessee continued to claim benefit on the ground that it applies also to contractors. This even after the amendment to Section 80IA(4) brought about by Finance Act 2007 with retrospective effect from 1st April, 2000. It is relevant to note that the view taken by the respondent-assessee was a possible view on the basis of the provisions as it stood even after the amendment and some decisions of Tribunal. In view of the provisions not being very clear, the Parliament by Finance Act (No.2) of 2009 introduced on explanation with retrospective effect from 1st April, 2000 by which it was clear that the respondent-assessee would not be entitled to the benefit of Section 80IA(4) of the Act as its work was in the nature of works contract. The Tribunal in the impugned order upheld the deletion of penalty by the CIT(A) on the ground that at the time of filing the return of income the respondent's claim to benefit of Section 80I of the Act a debatable issue. Thus no penalty was imposable as held by the CIT(A).

4. We are informed that the impugned order of the Tribunal was

follow by the Tribunal in the case of ***CIT vs. M/s. Thakur Mhatre Unity Joint Venture*** in Income Tax Appeal No.325/Mum/2011 rendered on 30th April, 2013. The Revenue being aggrieved by the aforesaid decision rendered in the case of M/s. Thakur Mhatre Unity Joint Venture filed an appeal to this Court being Income Tax Appeal No.2078 of 2013 (CIT vs. M/s. Thakur Mhatre Unity Joint Venture). This Court by order dated 23rd November, 2015 dismissed the Revenue's appeal by following the decision of this Court in ***CIT vs. Yahoo India (P.)Ltd. 216 Taxman 66*** wherein it has been held that no penalty under Section 271(1)(c) of the Act is imposable where the position in law has been altered with retrospective effect subsequent to the filing of the return of income.

5. Mr. Tejveer Singh, the learned counsel appearing for the Revenue very fairly states that the issue stands concluded against the appellant-revenue by the decisions of this Court in M/s. Thakur Mhatre Unity Joint Venture (supra) and ***Yahoo India (P.)Ltd.*** (supra).

6. In the above view, the question as framed does not give rise to any substantial question of law. Thus, not entertained.

7. All the five appeals are dismissed. No order as to costs.

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

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