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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2067 OF 2013

Commissioner of Income Tax-2 ..Appellant
Versus
Immortal Financial Services Pvt. Ltd. ..Respondent

....
Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the Appellant.
Ms. Sanjukta Chowdhary for the Respondent.
....

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

DATE : 21ST MARCH, 2016

P.C.:

1. This Appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the "Act") takes exception of the order dated 30th April, 2013 passed by the Income Tax Appellate Tribunal ("Tribunal"). The impugned order dated 30th April, 2013 relates to Assessment Year 2007-08.

2. The Revenue has urged the following questions of law for our consideration:-

> "Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in cancelling penalty under Section 271(1)(c) of the Act imposed by the Assessing

Officer and confirmed by the Commissioner of Income Tax (Appeals)?”

3. The Respondent-Assessee is engaged in the business of trading in shares and providing financial consultancy. During the subject assessment year the Respondent-Assessee in its Return of Income had claimed short term capital gains on sale of share aggregating to Rs.1.39 crores and profits on the business of sale of shares at Rs.6.19 lakhs. The Assessing Officer by his Assessment Order dated 8th September, 2009 passed under Section 143(3) of the Act held that what is being claimed by the Assessee as short term capital gain is in fact profits and gains of business. Being aggrieved by the order dated 8th September, 2009 of the Assessing Officer, the Respondent-Assessee carried the issue in the Appeal before the Commissioner of Income Tax (Appeals) and from there further to the Tribunal.

4. The Tribunal by the order dated 30th April, 2013 dismissed the Respondent-Assessee's Appeal and held that the amount of Rs.1.39 crores claimed a short term capital gains on sale of shares is appropriately classifiable as profits and gains of business. Being aggrieved, the Respondent-Assessee has carried this issue in Appeal to this Court being Appeal No.1414 of 2011. This Appeal in quantum proceedings has been

admitted as giving rise to substantial question of law and is awaiting disposal.

5. In the meantime, the Assessing Officer having initiated the Penalty Proceedings under Section 271(1)(c) of the Act by an order dated 30th May, 2011 imposed a penalty of Rs.41.96 lakhs upon the Appellant. This on the ground that the Respondent-Assessee had furnished inaccurate particulars of income. On further Appeal, the Commissioner of Income Tax(Appeals) has confirmed the penalty imposed under Section 271(1)(c) of the Act upon the Respondent-Assessee.

6. Being aggrieved, the Respondent carried the issue to the Tribunal. The Tribunal by the impugned order dated 30th April, 2013 has recorded a finding that the Respondent-Assessee had furnished all details of its income and claimed a part of income to be classified as a short term capital gains was infact appropriately classifiable as income from business. The Tribunal in its impugned order relied upon its decision in the case of Sukdham Construction and Developers V/s. DCIT (Income Tax Appeal No.2172/M/2011) on identical facts to conclude that the mere change of head of income does not *ipso facto* lead to the conclusion that the Respondent-Assessee had concealed the particulars of income or furnished inaccurate particulars of income. The impugned order further

records that the issue is debatable. Consequently the imposition of penalty was not justified. Being aggrieved, the Revenue is in Appeal before us.

7. We find that in the present facts the Tribunal has rendered a finding of fact that the Respondent-Assessee has furnished all details of income in its Return of Income filed. Further on the basis of details furnished by the Respondent, the Assessing Officer had only changed the head of income. The view taken by the Tribunal in the impugned order that mere change of the head of income for purposes of taxation does not warrant a penalty is no longer res integra. This Court in ***Commissioner of Income Tax v/s. Bennett Coleman and Co.Ltd. (Income Tax Appeal (L)No.2117 of 2012 rendered on 26th February, 2013)*** holds that no penalty under Section 271(1)(c) of the Act is not imposable on account of change of head of income. In the above case, the Tribunal held that premium received on redemption of debentures claimed as income from other sources by the Assessee was held by the authorities under the Act as appropriately classifiable as income from capital gains at the instance of the Revenue could not result in imposition of penalty. The aforesaid order dated 26th February, 2013 has therefore justifiably held that a mere change in the head of income in the absence of any facts on record to indicate that the claim made by the Respondent-Assessee was not bonafide

would not warrant the penalty under Section 271(1)(c) of the Act. The Appellant-Revenue has not been able to point out any distinguishing facts in the present case which would warrant taking a view different from one taken in Bennett Coleman & Co. Ltd. (supra). The finding of fact by the Tribunal is not shown to be perverse. The above facts coupled with the fact that in quantum proceedings, the Appeal under Section 260A of the Act has been admitted, this would by itself evidence that the issue is debatable. Therefore penalty is not warranted.

8. In the aforesaid circumstances, we see no reason to entertain the proposed question of law.

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

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

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