Sbw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.91 OF 2000

Status Hotels Pvt. Ltd. ..Applicant
Versus
Commissioner of Income Tax, Pune ..Respondent

....
Mr. Mihir Naniwadekar a/w Ruturaj Gurjar for the Applicant.
Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the Respondent.
....

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

DATE : 18th NOVEMBER, 2016

P.C.:

1. By this Reference under Section 256(1) of the Income Tax Act, 1961 (the Act), the Income Tax Appellate Tribunal (Tribunal) seeks our opinion on the following two substantial questions of law:-

"*(i) Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the provisions of Explanation (4) to Section 271(1)(c) applies to a case where the income returned is a loss and income assessed is also a loss; and therefore, penalty can be levied in such case?*

(ii) *Whether on the facts and in the circumstances of the case, the* Tribunal is justified in confirming the penalty under Section 271(1)(c)?"

2. The Assessment Year relevant to the present Reference is A.Y. 1987-88.

3. <u>Regarding Question no.(i):-</u>

(a) It is an agreed position between the parties that the issue raised herein stands concluded in favour of the respondent-Revenue and against the applicant-assessee by the decision of the Apex Court in ***Commissioner of Income Tax v/s. Gold Coin Health Food (P.) Ltd. 304 ITR 308.***

(b) In the above view, question no.(i) is answered in the affirmative i.e. in favour of the respondent-Revenue and against the applicant-assessee.

4. <u>Regarding Question no.(ii):-</u>

(a) Mr. Mihir Naniwadekar, the learned counsel appearing for the applicant-assessee very fairly states that in view of the facts recorded in the impugned order of the Tribunal and the decision of the Apex Court in Gold Coin Health Food (supra) question no.(ii) is not being pressed.

(b) Accordingly, we have no occasion to give our opinion on the same.

5. Reference is disposed of in above terms.

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