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

INCOME TAX APPEAL NO. 421 OF 2014
WITH
INCOME TAX APPEAL NO. 419 OF 2014
WITH
INCOME TAX APPEAL NO. 434 OF 2014
WITH
INCOME TAX APPEAL NO. 439 OF 2014
WITH
INCOME TAX APPEAL NO. 442 OF 2014
WITH
INCOME TAX APPEAL NO. 446 OF 2014
WITH
INCOME TAX APPEAL NO. 583 OF 2014
WITH
INCOME TAX APPEAL NO. 588 OF 2014
WITH
INCOME TAX APPEAL NO. 603 OF 2014
WITH
INCOME TAX APPEAL NO. 687 OF 2014
WITH
INCOME TAX APPEAL NO. 693 OF 2014

Commissioner of Income Tax-25 } Appellant
versus
K. N. Shaikh } Respondent

Mr. Arvind Pinto for the appellant.

Mr. Prakash Pandit with Mr. Ratnesh Dube for the respondent.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- MARCH 20, 2017

P.C. :-

1. By these appeals, the Revenue challenges the finding of the tribunal on the question of imposition of penalty.

2. The imposition of penalty by the assessing officer was faulted by the first appellate authority and equally by the tribunal. To be fair to the tribunal, in some cases, it has upheld the penalty imposed by recording a specific finding that the first appellate authority's order upholding such penalty was not challenged by the assessee before it. It is only such matters, in which the tribunal deleted the penalty or upheld the deletion of penalty, the Revenue has brought these appeals.

3. Mr. Pinto appearing in support of these appeals urged that the tribunal's insistence on conclusive evidence would mean no penalty can be imposed. We are unable to agree. The tribunal has assigned very detailed and cogent reasons for its decision. The discussion from para 16 and culminating in para 19 pertains to 11 appeals for the assessment years 1983-84 to 1987-88 and other assessment years.

4. The tribunal found that as far as the appellant's business is concerned, the assessing officer proceeded on these lines. Firstly, he sought quarrying licence and issued by the competent

authority. He found out the outer limit and the extent to which the quarrying operations can be carried out. He then found out that the quarrying was done not limited to this extent, but over and above it. Therefore, the difference was worked out and that is how he computed the profits that the assessee generated over above the limited quarrying operations. However, the mistake committed by him is pointed out by the tribunal. Such an order of the District Collector, seeking to recover the differential amount from the quarrying operations in addition to over and above the limit prescribed in the licence, has been passed only in the assessment year 1993-94. Therefore, such an order and passed in the case of the assessee in one assessment year cannot be the basis for prior years or subsequent years. The tribunal recorded a finding of fact that in the quantum appeals, it has confirmed the findings of the first appellate authority in *toto*. Thus, the estimation of turnover relevant to assessment year 1993-94 as well as business profits adopting flat rate for quantifying the profits cannot be a general formula and for all assessment years. The assessment year-wise incriminating material has not been indicated in the assessing officer's order. It is such a finding, which eventually led the tribunal to employ the words that there is no concrete or conclusive evidence. The tribunal did not insist, as is understood by Mr. Pinto, on such degree of proof. It said, in more places than one, that there is no incriminating material and then concluded that there is hardly any concrete evidence, much less conclusive one. That is why neither the tribunal's understanding of the provision empowering imposition of penalty is erroneous in law nor its factual finding. It cannot be termed as perverse once it is consistent with the material placed on record. None of these appeals raise any substantial question of law. They are dismissed. There would be no order as to costs.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**