

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.492 OF 2015

The Commissioner of Income Tax-3,
Pune

.... Appellant

Vs.

Smt. Madhuri Satish Misal

.... Respondent

Mr. Sham Walve for the Appellant.

CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.

DATE : SEPTEMBER 19, 2017

P.C:

1. Heard Mr. Sham Walve, appearing for the Revenue in support of this appeal. The only question proposed by the Revenue as substantial question of law appears at page 7, para 5(A). It reads thus:-

“Whether on the facts and in the circumstances of the case and in law, the Honourable ITAT was correct in deleting the penalty levied u/s 271(1)(c) of the Act with respect to additions on account of interest on FDRs with Dena Bank and TDR sale receipts when the said incomes were detected by the Assessing Officer on

examination of books of accounts and not declared voluntarily by the assessee in the return of income?”

2. Thus, the deletion of penalty, according to Mr. Walve, raises substantial question of law.

3. Our attention is invited to paragraph 15 of the Tribunal's order which notes the facts and circumstances in which the penalty was imposed. But according to Mr. Walve, having correctly understood those facts, the Tribunal is in patent error in deleting the penalty.

4. We have perused the entire order of the Tribunal and which allows the assessee's cross-objections before us. The Assessment Year is 2008-09. The appeal of the Revenue and the cross-objections were directed against the order of the Commissioner of Income Tax (Appeals), Pune, dated 31-7-2012. The Commissioner was concerned with the correctness of an order dated 30-6-2011 of the Assessing Officer.

5. The Tribunal found that the common issue is with

regard to the penalty imposed by the Assessing Officer of Rs.45,38,213/- under Section 271(1)(c) of the Income Tax Act, 1961.

6. Certain additions were made to the return of income by the Assessing Officer on which penalty came to be imposed.

7. The assessment order was passed on 31-12-2010 where the return of income was enhanced. The assessee is an individual and she filed her return of income declaring total income of Rs.3,36,690/-. She declared income from house property, salary as well as income under the head, "Income from other sources". The scrutiny assessment was undertaken and various additions came to be made in relation to low household withdrawals, interest income, TDR receipts and short term capital gain. Out of the total additions made to the return of income, three additions were considered by the Assessing Officer to be concealed income within the meaning of the penalty provision. That is how the penalty was imposed and the Appellate Authority sustained it.

8. The argument was that because the assessee came forward to disclose the income only during the assessment proceedings, the penalty has been correctly levied. The Tribunal found, in relation to each of the income on the touchstone of which the penalty was imposed, that the amounts were deposited in the Bank account. They reflected transferable development right sales executed by the deceased husband prior to 2002. The assessee explained that neither she was the owner of the TDR assets nor was she party to the sale transaction. The transaction was executed by her deceased husband. The amounts were received by the assessee as a result of the dispute being settled in Court. Such receipt was treated as capital receipt not chargeable to tax and, therefore, it was not offered to tax in the return of income. However, during the course of the assessment the assessee agreed to pay tax on the same and that is how the sum of Rs.1,11,67,378/- was added to the total income.

9. It is that amount which has been subjected to levy of

penalty primarily on the ground that the assessee agreed to the addition and did not challenge it in appeal. The Tribunal in paras 19 to 21 of its order considered the principles which have to be invoked and applied for levy of penalty, the plain language of the statutory provision and the peculiar facts. Once the assessee is a beneficiary of the amount received as a consequence of the transfer executed by her husband, of which she had no knowledge, she offered that during the course of the assessment proceedings, that does not mean that her act can be brought within the penalty provision. The explanation rendered by the assessee is *bona fide*. There was no factual dispute. Therefore, in the facts and circumstances of the case, the Tribunal held that the assessee has discharged the primary burden. There was no material brought by the Revenue to show that the explanation of the assessee is either false or lacking in *bona fides*. It is in these circumstances, the Commissioner was justified in deleting the penalty. That view of the Commissioner was upheld. We do not think any wider question or larger controversy was dealt with by the Tribunal. The penalty is

deleted essentially in the above factual background. There is, therefore, no substantial question of law arising in this appeal. It is dismissed. No costs.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)