IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1795 OF 2014

COMMISSIONER OF INCOME TAX-10)...APPELLANT

V/s.

M/S.PETRON INVESTMENTS PVT. LTD.)...RESPONDENT

Mr.Arvind Pinto, Advocate for the Appellant.

Ms.Khushboo Shah Rajani i/b. MDP & Partners, Advocate for the Respondent.

CORAM : S.V.GANGAPURWALA & A. M. BADAR, JJ.

DATE : 29th JUNE 2017

P.C. :

1 The appeal filed by the assessee is allowed by the Tribunal. Proceedings under Section 271(1)(c) were initiated by the Assessing Officer. Penalty was imposed upon the assessee.

2 Mr.Pinto, the learned counsel for the appellant submits that the Tribunal was not justified in picking a sentence out of context from the order of penalty in order to come to the

conclusion that Assessing Officer had taken a new ground for the levy of penalty. The order is required to be read in its entirety. The CIT (Appeals) had confirmed the order of the Assessing Officer imposing the penalty upon the assessee. The Commissioner (Appeals) had also considered that the assessee had no proper explanation to offer in the assessment proceedings. The order of the Assessing Officer in the assessment proceedings has become final as the appeal filed by the assessee is withdrawn. The observations of the Tribunal that the ground for addition of income and the levy of penalty are at variance, is perverse. The learned counsel submits that the penalty was levied on the ground of having claimed expenditure as revenue. That was, infact, capital in nature. According to the learned counsel, the judgment relied by the Tribunal is on altogether a different premise. According to the learned counsel, the substantial question of law as framed, had arisen in the matter.

3 The learned counsel for the respondent supports the order and submits that the assessment proceedings and the

penalty proceedings are on altogether different premise. In the assessment order, the expenditure that was claimed by the petitioner on account of payment of professional fees was considered as a capital, whereas, the penalty proceedings were initiated on the ground that the said expenditure is not on account of the Company, but on account of shareholders of Company. The penalty proceedings on altogether different ground is not permissible. The learned counsel further submits that it is not a case of any concealment of income nor of submitting inaccurate particulars. The particulars were correctly submitted. The Assessing Officer considered the said particulars under a different head and merely because the Assessing Officer did not accept the head under which the expenditure was claimed, would not give rise to penalty proceedings. The learned counsel relied on the judgment of the Apex Court in the case of **Commissioner of Income-Tax vs. Reliance Petroproducts Pvt. Ltd.** reported in **[2010] 322 ITR 158 (SC)**.

4 We have considered the submissions canvassed by the learned counsel for respective parties, so also have gone through the judgment and the orders passed by the Assessing Officer, the CIT Appeals and the Tribunal.

5 In the assessment proceedings, the Assessing Officer came to the conclusion that the expenses incurred by the assessee i.e. payment of professional fees are in connection with disinvestment of the Company and the same is incurred by the assessee Company for such purpose, have to be capital in nature, which needs to be capitalized, as the same have been incurred for one time purpose. In the penalty proceedings, the Assessing Officer comes to conclusion that the expenditure cannot be considered as an expenditure of the Company. The said fact has been considered by the Tribunal. It is also a fact that the assessee had not concealed any material facts. The facts were disclosed. It was also not disputed that the amount as shown was spend towards legal expenses. The reliance placed by the learned counsel for the respondent in the case of CIT referred supra would be relevant.

6 Taking into account all the aforesaid facts conjointly, the Tribunal has taken a plausible view.

7 In view of that, no substantial question of law arises.

8 The appeal is disposed of.

(A. M. BADAR, J.) **(S.V.GANGAPURWALA), J.)**