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

**INCOME TAX APPEAL NO. 193 OF 2015**

S.H.R. Trading Pvt. Ltd. ... Appellant  
*Versus*  
Deputy Commissioner of Income Tax 9 (3) ...Respondent

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Mr. K. Gopal with Ms. Neha Paranjpe, i/b Jitendra Singh for the Appellant.  
Mr. Tejveer Singh, for the Respondent.

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**CORAM: M.S.SANKLECHA &  
MR. RIYAZ I. CHAGLA, JJ.**  
**DATED: 18TH DECEMBER 2017**

**PC:-**

1. This appeal under Section 260 (A) of the Income Tax Act (the Act) challenges the order dated 2nd July 2014 passed by the Income Tax Appellant Tribunal (the Tribunal). The impugned order dated 2nd July 2014 relating to Assessment Year 2009 – 2010 upholds the penalty imposed upon the appellant under Section 271 (1) (c) of the Act.

2. Mr. Gopal, learned counsel appearing on behalf of the appellant urges the following two questions for our consideration:-

*(1) “Whether on the facts and in the circumstances of the case, the Tribunal erred in upholding the decision of*

*the learned CIT(A) confirming the penalty of Rs.41,00,754/- under Section 271 (1) (c) of the Income Tax Act 1961 as imposed by the learned Assessing Officer?”*

*(2) Whether, on the facts and in the circumstances of the case, the Tribunal erred in ignoring the fact that the claim for exemption under Section 54 made by the Appellant is a bona fide mistake which does not deserve penalty under Section 271 (1) (c) of the Act?”*

2. The appellant company is in the business of letting out of immovable property. For the subject Assessment Year, the appellant filed its return of income declaring total income of Rs.82.17 lakhs. In its return the assessee had claimed benefit of Section 54 of the Act on the ground that the gain made on the sale of immovable property, namely a residential premises was not chargeable to long term capital gains as the same had been invested in acquiring new residential properties.

3. During the assessment proceedings under Section 143 (3) of the Act, the Assessing Officer found that the appellant being a company was not entitled to claim deductions under Section 54 of the Act. This for the reason that, it was available only to individuals and Hindu Undivided Family (HUF). The appellant is

admittedly an incorporated company and thus not entitled to the benefit of capital gains, on account of sale of residential property. Thus, the Assessing Officer in the assessment order dated 25th October 2011, disallowed the claim for deduction under Section 54 of the Act, and initiated penalty proceedings under 271 (1) (c) of the Act.

4.           Thereafter, by an order dated 26th April 2012, the Assessing Officer, under Section 271 (1) (c) of the Act, imposed a minimum penalty of Rs.41 lakhs being 100% of the tax sought to be evaded. This after holding that the appellant had furnished inaccurate particulars of income by claiming deduction under the head '*capital gains*' on sale of property which was prohibited under Section 54 of the Act. Therefore in the facts of the case negating the reliance by the appellant on decision of the Apex Court in ***CIT Vs. Reliance Petroproducts Pvt Ltd.***<sup>1</sup> to contend that penalty is not imposable only on account of having made an ineligible claim.

5.           Being aggrieved, the appellant carried the issue in appeal to the Commissioner of Income Tax (Appeals) (CIT)(A), without success. By an order dated 16th January 2013, the CIT

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1           (2010) 322 ITR 158 SC.

(A) upheld the penalty of Rs.41 lakhs imposed by the Assessing Officer.

6. On further appeal, the Tribunal by the impugned order dated 2nd July 2014, upheld the penalty. The impugned order holds that the decision of the Apex Court in ***Reliance Petroproducts (Supra)*** would have no application, as it is not a case of ineligible claim, but a claim in the return of income, found to be incorrect / false. So far as the contention of the appellant that, same was a *bona fide* mistake, the Tribunal on facts found that it is prohibited under the law and no evidence was led by the appellant to show that the claim under Section 54 of the Act, was made by a mistake. Accordingly, the appeal was dismissed by the impugned order dated 2nd July 2014 of the Tribunal.

7. On the aforesaid facts, we should now deal with the two questions proposed for our consideration.

8. **Regarding question no.1 :-**

(i) We find that in facts of the present case, the appellant has admittedly made a claim in its return of income which is prohibited under the Act. The claim for deduction under Section 54

of the Act could only be made by individuals or HUF, while the appellant is admittedly a company incorporated under the Companies Act, 1956. Thus this was not a case, where a claim made was debatable or claim being made in the absence of any prohibition to make such a claim under the Act. In the aforesaid cases, one could possibly infer that the claim was made under the *bona fide* interpretation of the law. In the present facts, this is admittedly not so. In the present facts, the appellant has furnished inaccurate particulars of income by claiming a deduction which is prohibited in case of assessee.

(ii) In fact the Apex Court in ***Reliance Petroproducts (Supra)*** has itself observed that penalty is imposable when an Assessee furnishes inaccurate particulars. In this case all the accounts under the Act, have as a finding of fact found that in making a claim under Section 54 of the Act, the Appellant has furnished inaccurate particulars. Thus the penalty under Section 271 (1) (c) of the Act is imposable upon the appellant.

(iii) In the above view, question no.1 as raised does not give rise to any substantial question of law. Therefore not entertained.

9. **Regarding Question no.2 :-**

(i) The claim of the appellant that this was a bona fide mistake in claiming exemption under Section 54 was urged for the first time before the Tribunal. However mere statement that a mistake is made not supported by any evidence, in the face of a statutory bar in claiming an exemption, has not been accepted by the Tribunal.

(ii) Nevertheless, Mr. Gopal the learned counsel of the Appellant placed reliance upon the decision of the Apex Court in ***Price Waterhouse Coopers Pvt. Ltd. V. Commissioner of Income Tax and Another***<sup>2</sup> and submits that the penalty is not imposable for a silly mistake. In the above facts, there is no evidence of mistake unlike in ***Price Waterhouse (Supra)*** where after holding the facts were peculiar, found that in its Tax Audit Report accompanying the Return of Income, it was specifically stated that the claim of gratuity is not allowable, yet deduction was claimed by mistake in the Return of Income.

(iii) The impugned order in not accepting the explanation offered by the appellant on the facts of the case is a possible view.

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<sup>2</sup> (2012) 348 ITR 306 (SC)

Therefore, the question no.2 also does not give rise to any substantial questions of law. Thus not admitted.

10. Accordingly, Appeal is dismissed. No order as to costs.

**( RIYAZ I. CHAGLA J. )**

**(M.S.SANKLECHA,J.)**