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

INCOME TAX APPEAL NO. 387 OF 2015

Commissioner of Income Tax-22 .. Appellant

v/s.

Shri Jayraj A. Doshi .. Respondent

Mrs. S.V. Bharucha for the appellant
Ms. Aarti Sathe a/w Ms. Garima Kapoor for the respondent

**CORAM : S.V. GANGAPURWALA &
A.M. BADAR, J.J.**

DATED : 1st AUGUST, 2017

P.C.

1. The appeal pertains to Assessment Year 2008-09.

2. The appeal is filed on the following substantial questions of law :-

(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in setting aside the findings of the CIT(A) and directing the Assessing Officer to delete the penalty so levied u/s 271(1)(c) of the Act on the ground that where two views are possible for claim of deduction / exemption and if the assessee has taken one possible view then penalty cannot be levied u/s 271(1)(c) of

the Act.

(b) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in not considering the judgment in the case of CIT Vs. S.M.J. Builders (2003) 262 ITR 60 (Bom) and the judgment of the Apex Court in the case of B.A. Subramaniam and Bros Co. Vs. CIT (1999) 236 ITR 977.

3. The learned Counsel submits that the finding was arrived at by the Assessing Officer in CIT(A) that the assessee had erroneously claimed deduction under Section 54 of the Act in respect of two flats. The assessee subsequently withdrew the claim in respect of one flat. This itself shows that the act of the assessee is not *bona fide*. The Explanation to Section 271(1)(c) of the Act has not at all been considered by the Tribunal. The burden is on the assessee to establish that he has not concealed the income nor has submitted inaccurate particulars of income.

4. It would appear that the appellant filed his return of income claiming exemption of long term capital gain of Rs.1.30 crores. It was receipt of vacating the rented premises and invested the entire

receipt in purchase of two flats. The appellant, therefore, claimed that the total receipt of amount of Rs.1.30 crores being liable to capital gain tax was exempted under Section 54F of the Act. Relying on the earlier Section 54F of the Act, the assessee claimed investment in two flats as exemptions based on the advice of the Chartered Accountant. The assessee, it appears, overlooked the proviso added to Section 54F(1) w.e.f. 1st April, 2001. The assessee revised the return on going across the decision of the Tribunal in a case of ***ITO Vs. Ms. Sushila M. Jhaveri (2007) 107 ITD 327*** and restricted the deduction in respect of the investment of one flat. The Tribunal has observed that the assessee *bona fidely* believe that as he has invested the entire amount of the sale of his capital asset, he would be entitled for the exemption. It cannot be said that the act of the assessee in claiming the deduction under Section 54 was not *bona fide* one. The Tribunal has stated a plausible view.

5. In the light of the above, no substantial questions of law arise. The appeal is dismissed. No costs.

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