IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 767 OF 2015

The Pr. Commissioner of Income-Tax-4,
Mumbai ....Appellant
V/s.
M/s. Vensimal Securities Ltd. ....Respondent

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Mr. A.R. Malhotra a/w. Mr. N.A. Kazi, Advocate for the appellant.

Ms. Rutuja Pawar, Advocate for the respondent.

**CORAM :- M.S. SANKLECHA, &**

**SANDEEP K. SHINDE, JJ.**

**DATE :- 6TH MARCH, 2018.**

**P.C. :-**

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 2nd September, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 2nd

September, 2014 is in respect of Assessment Year 2005-06.

2. Revenue urges the following reframed question of law, for our consideration:

> *"(A) Whether on the facts and in the circumstance of the case and in law, the Hon'ble Income Tax Appellate Tribunal was right in deleting the penalty under Section 271(1)(c) of the Act attributable to bad debts only on the ground that appeal of the assessee, against the addition on account of bad debts of Rs.74,54,700/-; in quantum proceedings being admitted."*

3. Appeal is admitted on the above re-framed substantial question of law. As the issue involved is within a narrow compass, the Appeal is itself taken up for final disposal at this stage on the request of the Counsel for both sides.

4. We find that the impugned order of the Tribunal dated 2nd September, 2014 has allowed the respondent's Appeal against imposition of penalty by solely relying upon the decision of this Court in Commissioner of Income Tax Vs. *Nayan Builders & Developers (Income-Tax Appeal No. 415 of*

*2012) decided on 8th July, 2014* to hold that once Appeal has been admitted by this Court in quantum proceedings, then no penalty under the Act is sustainable. It holds that admission of an appeal is itself evidence of the issue being debatable.

5. This Court in **Principal Commissioner of Income Tax-2, Mumbai V/s. M/s. Shree Gopal Housing & Plantation Corporation, Mumbai (Income Tax Appeal No. 701 of 2015 rendered on 6th February, 2018**) has considered the decision of this Court in *Nayan Builders & Developers Pvt. Ltd* (supra) and after observing that it was rendered on its own facts had held that the question of deleting penalty would have to be decided on a case to case basis and one cannot dehors the facts, proceed to delete penalty merely on the ground that the Appeal from order in quantum proceedings have been admitted.

6. Further, Ms. Pawar, the Learned Counsel appearing for the respondents states that, all particulars of income had been disclosed. Thus, the imposition of penalty under Section 271(1)(c) of the Act for filing inaccurate particulars of the income is not justified, in the present facts. However, as its Appeal was being allowed on a legal issue,

there was no occasion for them to urge this particular issue before the Tribunal.

7. In the above view, it would be appropriate that we set aside the impugned order of the Tribunal dated 2nd September, 2014 and restore the issue to the Tribunal for fresh consideration keeping in view the decision of our Court in *M/s. Shree Gopal Housing & Plantation Corporation* (supra) and also considering the respondent-assessee's submission that no penalty is imposable under Section 271(1)(c) of the Act as no inaccurate particulars of income had been filed by the respondent in the present case.

8. Accordingly, the question as proposed, is answered in the negative in favour of the Revenue and against the respondent-assessee. However, in the present facts, the issue is restored to the Tribunal for fresh consideration and passing an appropriate order in accordance with law.

9. Appeal disposed of in above terms. No order as to costs.

**(SANDEEP K. SHINDE, J)** **(M.S. SANKLECHA, J)**