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

INCOME TAX APPEAL NO. 797 OF 2016

Pr. Commissioner of Income Tax-7 .. Appellant

v/s.

Onward E Services Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
Mr. Atul Jasani for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 11th DECEMBER, 2018.

P.C.

1. This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short), dated 31.7.2015.

2. Following question is presented for our consideration :-

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the penalty levied by the AO u/s 271(1)(c) of the Act without appreciating the fact that the Assessee had failed to prove as to whether the expenses is allowable or not and also failed to produce any authenticated documentary evidence to support the claim?"

3. The issue pertains to penalty imposed by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 ("the Act" for short), which was deleted by the CIT(A). In further appeal, by the impugned judgment the Tribunal dismissed the Revenue's appeal. Hence, the present appeal.

4. In the judgment under challenge, the Tribunal has recorded that the assessee had made certain expenditure and claimed the same as revenue expenditure. During the assessment, the same was treated as capital expenditure and depreciation as per the rules was allowed. The Tribunal, therefore, was of the opinion that such dispute would not give rise to penalty proceedings. The only difference between the assessee and the Revenue was whether the expenditure in question was revenue in nature or capital expenditure. Full matrix of the expenditure was disclosed in the return filed. Merely because the assessee's claim in law was not accepted, would not give rise to penalty proceedings.

5. We are in agreement of the view of the Tribunal. When full disclosures were made by the assessee and only dispute between the assessee and the Revenue was the treatment that the expenditure

should receive, penalty proceedings were correctly set aside by CIT(A) and confirmed by the Tribunal. No question of law arises.

6. The tax appeal is dismissed.

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