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

INCOME TAX APPEAL NO.799 OF 2016

The Principal Commissioner of Income Tax-12 … Appellant

V/s.

M/s Hindustan Oil Exploration Co. Ltd. … Respondent

Mr.N.C.Mohanty for the Appellant.
Mr.Nishit Gandhi for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : DECEMBER 10, 2018.

P.C.:-

1. The Revenue has filed this appeal against the judgment of Income Tax Appellate Tribunal dated 31st August, 2015.

2. Following questions of law have been presented for our consideration:

> "i. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is justified in upholding the order of CIT (A) deleting penalty levied under Section 271(1)(c) of the Act on disallowance of

> claim of Rs.84,87,05,610/- under section 80IB(9) of the Act, when the quantum additions /disallowance is subject matter of appeal before the Hon'ble High Court?
>
> ii. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is justified in upholding the order of CIT (A) in deleting the penalty of Rs.19,75,991/- levied under Section 271(1)(c) on disallowance of Rs.58,70,442/- under Section 14A of the Act, when the quantum addition/allowance is subject matter of appeal before the Hon'ble High Court?
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> iii. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is justified in upholding the order of CIT(A) deleting penalty of Rs.2,95,21,638/- levied under Section 271(1)(c) on account of interest income, foreign exchange gain and miscellaneous income totaling to Rs.8,77,05,401/- considered by AO as ineligible for deduction under Section 80IB(9) of the Act?”

3. As can be seen from the questions, the issue pertains to penalty under Section 271(1)(c) of the Income Tax Act.

4. The Revenue's main objection to the deletion of the penalty is that the quantum additions deleted by the Tribunal, relating to the penalty was challenged before the High Court by the Revenue. Learned counsel for the assessee placed on record an order dated

16th March, 2017 passed the Division Bench in Income Tax Appeal No.1777 of 2014 recording that the Revenue had withdrawn the appeal. In such appeal the Revenue had raised the question of the quantum additions being deleted in connection with the assessee's claim of deduction under Section 80IB(9) of the Income Tax Act. This would mean that the decision of the Tribunal with respect to the quantum additions has become final. If that be so, obviously the penalty in relation to such additions cannot be sustained. Counsel for the Revenue stated that the order of the High Court dated 16th March, 2017 refers only to the additions under Section 80(9) of the Act. There were other additions in the same assessment year 2007-08. If that be so, the rest of the issues do not even appear to have been challenged by the Revenue in the said appeal. Even on that ground no further penalty can be sustained. We also notice that the Revenue is contesting the deletion of penalty of Rs.2,95,21,638/- on account of interest income, foreign exchange gain and other miscellaneous income. In this context, we notice that the Tribunal has in the impugned judgment given detailed reasons and come to the conclusion that there was complete disclosure on part of the assessee and therefore, no penalty could have been leveled. Tribunal in the process referred to and relied upon the judgment of Supreme Court in case of **CIT Vs. Reliance Petroproducts Pvt. Ltd**.[1]. Under the circumstances, no question of law arises. Tax appeal is dismissed.

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

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