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

INCOME TAX APPEAL NO. 796 OF 2016
WITH
INCOME TAX APPEAL NO. 872 OF 2016

The Pr. Commissioner of Income Tax-17 .. Appellant

v/s.

Shri Hafeez S. Contractor .. 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. These appeals under Section 260-A of the Income Tax Act, 1961 (the Act) challenge the common order dated 2nd September, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The common impugned order relates to Assessment Years 2007-08 and 2008-09.

2. In both these appeals, the Revenue raised the following identical question of law for our consideration :-

> *Whether on the facts and circumstances of the case and in law, the Tribunal was justified in deleting the penalty levied under Section 271(1)(c) of the IT Act, 1961?*

3. It is admitted position that the facts and the law applicable in both the assessment years are identical. The impugned order of the Tribunal allowed the respondent's appeals. This on holding that no penalty is imposable under Section 271(1)(c) of the Act for the reason that at the time of initiating penalty proceedings or even at the time of issuing show-cause notices for imposition of penalty, the Assessing Officer had not specified whether the penalty proceedings are on account of concealment of particulars or furnishing incorrect details / particulars. In the absence of the same being specified, the entire proceedings were held to be without jurisdiction. For the aforesaid conclusion, the impugned order of the Tribunal relied upon the order passed by its co-ordinate bench in the case of Shri. Samson Perinchery, rendered on 11th October, 2013. (ITA No. 4625 to 4630/M/13) after following the decision rendered by the Karnataka High Court in *CIT Vs. Manjunath Cotton and Ginning Factory, 359 ITR 565*, which in turn placed reliance upon the Apex Court decision in the case of *Ashok Pai*

Vs. CIT, 292 ITR 11. Being aggrieved by the above order dated 11th October, 2013 passed by the Tribunal in the case of *Shri. Samson Perinchery* (supra), the Revenue filed an appeal to this Court being Income Tax Appeal Nos. 953, 1097, 1154 and 1226 of 2014. This Court by order dated 5th January, 2017 dismissed the Revenue's appeal holding that the issue stands concluded in favour of the respondent-assessee by the decision of the Karnataka High Court in the case of *Manjunath Cotton and Ginning Factory* (supra). Nothing was shown to us in that case nor in this case to support a view different from the view taken by the Karnataka High Court in the above case by placing reliance upon the Apex Court decision in Ashok Pai (supra).

4. Therefore, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

5. Accordingly, both the appeals are dismissed. No order as to costs.

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