IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 137 OF 2016

The CIT- (TDS-1), Mumbai ....Appellant
V/s.
M/s. Maharashtra State Electricity
Distribution Co. Ltd. ....Respondent

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

Mr. Jehangir Mistri, Senior Counsel a/w. Mr. Niraj Sheth, i/by. Mr. Atul Jasani, Advocate for the respondent.

**CORAM :- M.S. SANKLECHA, &**
**SANDEEP K. SHINDE, JJ.**

**DATE :- 27TH JUNE, 2018.**

**P.C. :-**

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 5th March, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 5th March, 2015

upholds the deletion of penalty under Section 271C of the Act in respect of Assessment Year 2009-10.

2 Mr. Malhotra, Learned Counsel appearing in support of the Appeal, urges the only following question of law, for our consideration:

> *"(a) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in law in deleting the penalty under Section. 271C of the Income-Tax Act without going into a wide meaning of Rent provided in Section 194I by way of the explanation and only on the ground that quantum addition has been deleted, without appreciating the fact that the quantum addition is being further challenged ?"*

3 The impugned order dated 5th March, 2015 had dismissed the Revenue's Appeal against deletion of penalty. This on the ground that, in the quantum proceedings which form the foundation of the penalty proceedings, the stand of the respondent-Assessee that it is not liable to deduct tax at source under Section 194-I of the Act was upheld by the Tribunal by its order dated 27th June, 2012 for the subject Assessment Year.

4 Mr. Malhotra, Learned Counsel appearing for the Revenue, very fairly points out that, being aggrieved by the

order dated 27th June, 2012 the Appeal filed by the Revenue in the quantum proceedings from the order dated 27th June, 2012 has been dismissed by this Court on 8th May, 2015 as reported in **Commissioner of Income-tax (TDS), Mumbai v. Maharashtra State Electricity Distribution Co. Ltd. 375 ITR 23 (Bombay)**. The further Special Leave Petition by the Revenue to the Apex Court was also dismissed on 5th February, 2016 as reported in **Commissioner of Income-Tax (TDS)-1, Mumbai v. Maharashtra State Electricity Distribution Co. Ltd, 242 Taxman 369 (SC)**.

4 In the above view, as the foundation is removed the superstructure falls. Therefore, imposition of penalty under Section 271(c) of the Act does not survive.

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

6 **Appeal dismissed.** No order as to costs.

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