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

INCOME TAX APPEAL NO. 199 OF 2015

Commissioner of Income Tax(Central)-IV .. Appellant
v/s.
M/s. Lodha Builders Pvt. Ltd. .. Respondent

Mr. N. C. Mohanty for the appellant
Mr. V. Sridharan, Senior Counsel a/w Mr. Shyam Gopal, Mr. Ziyad Madon, S. Sriram i/b Veritas Legal for the respondent

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA J.J.

DATED : 6th FEBRUARY, 2018.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges a common order dated 27th June, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The common impugned order is in respect of Assessment Year 2009-10.

2. The Revenue has urged the following questions of law for our consideration :-

(i) Whether on the facts and in the circumstance of the case and in law, the Tribunal is justified in deleting the penalty u/s 271E holding that there was reasonable cause u/s 273B for entering into such transactions through journal entries?

(ii) Whether on the facts and in the circumstance of the case and in law, the Tribunal is justified in holding that the penalty order is barred by limitation under Section 275(1) of the Act?

(iii) Whether on the facts and in the circumstance of the case and in law, the Tribunal is justified in holding that the Assessing Officer's decision to refer the matter of penalty u/s 271E to the Addl. Commissioner of Income Tax constitute "action for imposition of penalty" and, therefore, period of limitation would be counted with reference to the date of assessment order instead of the date of issue of penalty notice by the Addl. CIT ?

(iv) Whether on the facts and in the circumstance of the case and in law, the Tribunal is justified in holding that the journal entries should enjoy equal immunity on par with account payee cheques and bank drafts ?

3. The learned Counsel for the parties state that for the reasons indicated in our order passed today in Income Tax Appeal No.171 of 2015 along with other connected appeals in respect of Sections 269SS and 271D of the Act r/aw Section 273 of the Act would equally apply to this appeal dealing with Section 269T r/w Section 271E r/w 273B of the Act for the purposes of disposing of this appeal.

4. In the above cases, i.e. Income Tax Appeal No.171 of 2015 and

other connected appeals, we held the question No.(i) does not give rise to any substantial question of law. On that basis, we held that other questions raised therein become academic. The question no.(i) raised herein is similar to question no.(i) herein. The only difference being Section 271E of the Act in this case relates to Section 269T of the Act, while in above appeals dismissed today, deals with Section 271D of the Act, which relates to Section 269SS of the Act. The only difference between the two is one relates to taking of loans / deposits and the other deals with repayment of loans / deposits.

5. Therefore, as submitted by the parties, the reasons indicated in our order passed today in Income Tax Appeal No.171 of 2015 and other connected matters, will equally apply to this appeal also. In view of the above, question no.(i) does not give rise to any substantial question of law. In the above view, the other questions raised herein also become academic. Therefore, there is no reason to entertain this appeal.

6. Accordingly, the appeal is dismissed. No order as to costs.

(RIYAZ I. CHAGLA, J.) **(M.S. SANKLECHA, J.)**