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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 1244 OF 2017

Commissioner of Income Tax ...Appellant
vs
Aditya Birla Nuvo Ltd. ...Respondent.

.....

Mr Suresh Kumar for the Appellant.
Mr Nitesh Joshi I/b Atul Jasani for the Respondent in all appeals.

.....

CORAM : AKIL KURESHI &
B.P.COLABAWALLA, JJ.
FEBRUARY 13, 2019.

P.C. :

The appeal is filed by the Revenue challenging the Judgment of Income Tax Appellate Tribunal. The following question is presented for our consideration-

> "(a) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in deleting the penalty of Rs.3,37,53,700/- levied u/s 271(1)(c) of the Act without deciding the issue on merits but by just relying on the decision of the Hon'ble Delhi High Court in the case of Liquid Investment & Trading Co. in ITXA 240 of 2009 dated 05.10.2010."

2 The issue pertains to the penalty levied under Section 271(1)(c) of the Income Tax Appeal, 1961 ("IT Act" for short). The Commissioner of Income Tax (Appeal) ("CIT(A)" for short) had allowed the appeal and the Tribunal by the impugned Judgment

upheld such order.

3 The facts on record would suggest that the assessee had installed power plant. On the boiler which was the part of the power plant, the assessee had claimed depreciation of 100 % of normal rate which came to 6.52 Crores (rounded off). The A.O. was of the opinion that the boiler was not put to use for more than 180 days of the year and that, therefore, the assessee was entitled to only 50 % of the depreciation claimed. This was the sole ground of addition which led the A.O. to impose penalty.

4 We find that admittedly the assessee had installed the boiler on 31st August 1992 and turbine was thereafter installed and commissioned in November 1992. It was on account of these facts that the A.O. held that the assessee was not entitled to the depreciation for the entire year.

5 It can thus be seen that the assessee had placed full facts before the A.O. and made bona-fide claim. Merely because, upon appreciation of such facts, the A.O. came to the conclusion that the assessee had not put the boiler to use for a period for excess of 180 days and was, therefore, not entitled to depreciation at full rate,

would not give rise to penalty proceedings. No question of law arises. The Income Tax Appeal is dismissed. No order as to costs.

(B.P.COLABAWALLA, J.) **(AKIL KURESHI, J.)**