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

INCOME TAX APPEAL NO. 794 OF 2017

Principal Commissioner of Income Tax-12,
Mumbai … Appellant

V/s.

Abode Construction Ltd. ... Respondent.

Mr. Sham Walve for the Appellant.

CORAM : M.S. SANKLECHA &
NITIN JAMDAR, JJ.

DATE : 16 SEPTEMBER 2019.

<u>P.C.</u> :-

The Appellant – Revenue has filed this Appeal under Section 260A of the Income Tax Act, 1961 challenging the order dated 8 July 2016 passed by the Income Tax Appellate Tribunal, Mumbai. By the impugned order the Tribunal had dismissed the Appeal filed by the Appellant – Revenue against the order passed by the Commissioner of Income Tax (Appeals) deleting the penalty levied on the Respondent – Assessee by the Assessing Officer.

2. According to the Appellant following question is a substantial question of law that arises in the Appeal :-

> *“ Whether in the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the failure to disclose income by the Assessee when the project is complete would not amount to furnishing inaccurate particulars of income thereby resulting in concealment of the income by the Assessee ?”*

3. The Respondent – Assessee, a company is engaged in business of construction and real estate. The assessment of the Respondent for the Assessment Year 2004-05 was completed with total income of Rs.16,96,75,146. An Appeal was filed and the Commissioner of Income Tax (Appeals) granted relief on account of receipt of Rs.13,31,96,400/- and an irrevocable loan of Rs.16.75 lacs. The Assessing Officer gave effect to the order in Appeal and determined income at Rs.3,48,03,446/- The penalty proceedings were initiated under Section 271(1)(c) of the Act 1961. The Respondent – Assessee gave its explanation. The Assessing Officer rejected the explanation and imposed penalty of Rs.1,50,00,000/- for furnishing inaccurate particulars of income to the tune of Rs,3,48,03,446/-. The Respondent – Assessee filed an Appeal before the Commissioner (Appeals). The Commissioner (Appeals) by order dated 27 April 2009 set aside the penalty. The Appellant – Revenue filed an Appeal ITA 4067/Mum/2009 in the Tribunal. By

impugned order dated 8 July 2016, the Tribunal dismissed the Appeal. Both, the Commissioner (Appeals) and the Tribunal held that the stand taken by the Respondent was bonafide, and levy of penalty was not warranted.

4. We have heard Mr. Sham Walve, learned Counsel for the Appellant.

5. It has been the case of the Respondent – Assessee throughout that it was under a bonafide belief that the method adopted by it was recognized method for computing income for construction business i.e. project completion method. The question therefore arose whether the action of the Respondent was bonafide. It appears that the project was a subject matter of litigation before this Court. There was a dispute between the Respondent and Chandivali Residents Association and also between the Respondent and Maharashtra Housing and Area Development Authority. There were claims and counter-claims made against the Respondent and the Respondent took a stand that it would be appropriate to defer the decision of revenue recognition till the issue is settled. In fact, in quantum proceedings, when the dispute had come before the Tribunal, there was difference of opinion between the members and third member had to resolve the dispute as to when the project is said to be completed for revenue recognition. This itself would

support the case of the Respondent that it was under a bonafide belief that the project would be completed only after the dispute is resolved. Thus, it is not a case of furnishing inaccurate particulars of income to justify invocation of Section 271(1)(c) of the Act.

6. In view of concurrent finding of fact by the Commissioner (Appeals) and the Tribunal, not being shown to be perverse or illegal, the view of the Tribunal calls for no interference. Thus, the issue raised in the Appeal does not give rise to any substantial question of law. The Appeal is dismissed.

NITIN JAMDAR, J. **M.S. SANKLECHA, J.**