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<u>**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**</u>

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL No.967 of 2016

Principal Commissioner of Income-tax-17 ..Appellant.
Vs
Goldfilled Mercantile Company ..Respondent.

Mr. Suresh Kumar, Advocate for the Appellant.

Mr. H. Rai a/with Mr. Subhash Shetty Respondent.

CORAM : AKIL KURESHI &
B. P. COLABAWALLA, JJ.

DATED :- 8TH JANUARY, 2019.

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

1 This appeal is filed by the Revenue challenging judgment and order dated 16th September, 2015 passed by the Income-tax Appellate Tribunal (**"the Tribunal"** for short).

2 The Revenue has urged the following question of law for our consideration :

> "Whether on the facts and in the circumstances of the case and in law the ITAT was correct in deleting the penalty levied under Section 271 (1) (c) of the Income Tax Act, 1961?

3 Brief facts are as under :-

The respondent assessee is a partnership firm. The assessee had sold certain immovable property during the period relevant to the assessment year 2009-10 giving rise to capital gain. The case of the Assessee was that under a will of one of the partners of the firm, a portion of such sale proceeds was to be given to three sisters in equal proportion of Rs. 4.5 Crores each. The firm actually paid such amount inclusive of tax payable on such receipt to the sisters. The assessee claimed the deduction of such payments while offering the receipts by way of capital gain in the return filed for the said assessment year 2009-10.

4 The Assessing Officer did not accept the Assessee's contention and insisted that the entire capital gain should have been offered by the firm itself. The assessee in such circumstance argued that in such case the tax paid on the amounts paid offered to the sisters may be given to the credit of. The Assessing Officer accepted such requests.

5 It was in this background that the Assessing Officer initiated the penalty proceeded for their declaration of capital gain by the assessee. The Tribunal allowed the appeal and deleted the

penalty on the ground that the assessee had putforth a bona fide claim making full disclosures and no question of penalty would therefore be arise.

6 We are in agreement with the view of the Tribunal. The Assessee had raised a claim giving full particulars thereof. Even if such claim was found to be not sustainable, the penalty in any case could not have been levied since the assessee had raised a bona fide claim.

7 In the result, the income-tax appeal is dismissed.

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