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

INCOME TAX APPEAL NO. 1344 OF 2016

Pr. Commissioner of Income Tax-1 .. Appellant

v/s.

Parinee Developers Pvt. Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
Mr. Nishant Thakkar a/w Mr. Hiten Chande I/b PDS Legal for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 30th JANUARY, 2019

P.C.

1. This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) raising following question for our consideration :-

> *"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in deleting the penalty levied u/s 271(1)(c) of the Act without appreciating the fact that the penalty was levied on enhancement made by CIT(A) on account of admitted under reporting of profits by filing wrong estimate of income of expenditure?"*

2. The respondent assessee is a private limited company. The issue involved is one of imposition of penalty under Section 271(1)(c) of the Income Tax Act,1961 ("the Act" for short) in relation to assessee's return of income for Assessment Year 2009-10. Having heard learned Counsel for the parties and having perused the documents on record, what emerges is that the CIT(A) had made certain additions and thereby enhanced the taxable income of the assessee and also initiated penalty proceedings. Ultimately, the penalty that was imposed under Section 271(1)(c) of the Act came to be deleted by the Tribunal by the impugned judgment. The Tribunal pressed in service several grounds for deleting the penalty. However, it is not necessary to examine such grounds since only on the first ground recorded by the Tribunal, it is possible to sustain the judgment. The Tribunal noted that the addition of Rs.28.62 crores made by the CIT(A) was on account of reworking of the estimated project cost based on actual cost incurred upto 31.03.2013. The Tribunal noted that against the cost of estimated cost Rs.1628.02 crores, the CIT(A) adopted a sum of Rs.1425.19 crores as the actual expenditure incurred on the project till the year end. The Tribunal noted that rest of the calculations made by the CIT(A) were directly related to the change in method of accounting rejecting the assessee's figures and the method of accounting in this regard. The

Tribunal, therefore, observed that whatever be the better method of accounting, this was not a case of concealment of income leading to penalty. The Tribunal noted that the addition of Rs.28.62 crores had the genesis in the estimation on one side and preponement of the expenditure on the other, based on change of method of accounting. Thus, in clear terms the Tribunal found that the assessee had neither concealed the income nor concealing the particulars of such income. The penalty was, therefore, correctly deleted. We may also record that the penalty was based on other additions with respect to which also the Tribunal adopted the same principles. No question of law arises.

3. The tax appeal is dismissed.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**