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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 1247 OF 2016

Pr. Commissioner of Income Tax-17 ..Appellant
Vs.
M/s. United Marine Services ..Respondent

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Mr. Sham Walve for appellant.

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CORAM : AKIL KURESHI & M.S. KARNIK, JJ.

DATE : 4th JANUARY, 2019

P.C. :

This Appeal is filed by the Revenue challenging the judgment of Income Tax Appellate Tribunal dated 2/11/2015. Following questions are raised for our consideration :

A. Whether on the facts and circumstances of the present case the Hon'ble Tribunal was justified in deleting the penalty of Rs.55,30,180/- levied under section 271(1) (c) of the I.T. Act, 1961 ?

B. Whether on the facts of the case and in Law, the Hon'ble Tribunal was justified in allowing the relief to the Assessee, ignoring the fact that the assessee had not filed correct return of income voluntarily but only when scrutiny assessment was done, which amounts to concealment of income with respect of the concerned year, i.e. A.Y.2009-10 ?

2. The issue pertains to penalty levied by the Assessing Officer under Section 271 (1) (c) of the Income Tax Act, 1961 ('the Act' for short) which the Tribunal deleted. In the impugned judgment the Tribunal noted that dis-allowance required to be made under Section 40(a)(ia) of the Act were duly furnished in the Tax Audit Report. Such Tax Audit Report was received on 30th September, 2009 i.e. on the last date for filing return of income for the concerned assessment year. The Tribunal, therefore, accepted the assessee's contention that not making dis-allowance was a pure oversight or an error. The entire issue is thus based on the facts.

3. We further notice that the Tribunal relied on the decision of the Hon'ble Supreme Court in case of **Price Waterhouse Cooper (P) Ltd. vs. CIT** reported in **348 ITR 306**

(SC) in which the Hon'ble Supreme Court accepted the assessee's explanation that not furnishing certain income to tax was a mistake and thereby deleted the penalty. We also notice that the Hon'ble Supreme Court in case of **Commissioner of Income Tax vs. Reliance Petroproducts Pvt. Ltd.** reported in **322 ITR 158 (SC)** has held that there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false, there is no question of inviting the penalty. A mere making of the claim, which is not sustainable would not give rise to penalty proceedings.

4. In the result, Income Tax Appeal is dismissed.

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