

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

INCOME TAX APPEAL NO.1812 OF 2016

The Pr.Commissioner of Income-Tax-18 ... Appellant

V/s.

Shri Bharatkumar Maneklal Parikh ... Respondent

Mr.Prakash Chandra Chhotaray for the Appellant.

Mr. Nitesh Joshi with Mr.Atul Karsandas Jasani for the
Respondent.

**CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : MARCH 04, 2019.**

P.C.:-

1. Revenue has filed this appeal against the judgment of the
Income Tax Appellate Tribunal ("Tribunal" for short) dated 21st
October, 2015 raising following questions for our consideration:

“I. Whether on the facts and in the circumstances
of the case and in law the ITAT was justified in not
upholding the order of penalty passed by the
Assessing Officer under Section 271(1)(c) of the
Act?

II. Without prejudice to above, whether on the
facts and in the circumstances of the case and in
law, the CIT (A) was justified in reducing penalty
relatable to excess claim of exemption u/s 54EC of
the Act?”

2. The principle dispute of the revenue in this appeal relates to the judgment of the Tribunal deleting penalty imposed by the Assessing Officer against the respondent-assessee under Section 271(1)(c) of the Income Tax Act, 1961 ("the Act" for short).

3. Case of the revenue is that the assessee had earned sizable income, which should have been offered to the tax by way of capital gain, which in the return of income filed by the assessee for the assessment year 2010-11, assessee had not done. It is only upon the Assessing Officer noticing the huge mismatch between the assessee's declared income and the claim of the refund of advance tax, that the revenue decided to take the return of the assessee in scrutiny during which the necessary facts could be gathered. After making additions in the hands of the assessee, the Assessing Officer instituted penalty proceedings. Such penalty was confirmed by the CIT (Appeals), upon which the assessee carried the matter before the Tribunal. The Tribunal by the impugned judgment deleted the penalty inter-alia

observing that for the year under consideration the assessee had filed return on 20th September, 2010. On the same day, the assessee had also filed a letter with the Assessing Officer giving relevant information to the effect that the capital gain accruing on account of sale of leasehold rights in the property situated at Goregaon was not included in the computation on the plea of self generated asset. A note was also appended at the end of the computation of the income, which suggests that receipt accrued out of sale of leasehold rights and the assessee's justification for the same not being exhibitable tax. During the course of the proceedings, the assessee had furnished further details which included the lease documents, letter making detailed grounds why according to the assessee receipt on sale of leasehold rights was not chargeable to capital gain tax etc. On such basis the Tribunal recorded that there was no dispute that no information given in the return was found to be incorrect or inaccurate. Merely because the claim put forth by the assessee was found to be unsustainable in law, in the opinion of the Tribunal penalty would not necessarily attach. In this context, the Tribunal relied on the decision of the Supreme Court in case

of **Commissioner of Income Tax, Ahmedabad Vs. Reliance Petroproducts Pvt. Ltd.**¹. The Tribunal also noted that before filing the return, the assessee had obtained an opinion of the Chartered Accountant why the receipt in question was not exhibitable to tax. Primarily, on such grounds, the Tribunal deleted the penalty and allowed the assessee's appeal.

4. Appearing for the revenue, learned counsel Shri Chhotaray vehemently contended that the assessee had not made true and full disclosures of income in the return filed. The existence of the so-called letter dated 20th September, 2010 was doubtful. In any case, by merely writing the letter giving further details, the assessee cannot escape the penalty proceedings. He submitted that there was clear attempt on the part of the assessee to suppress the income and the attempt would have succeeded if the return had not been taken in scrutiny. He further submitted that Chartered Accountant's opinion was not produced on record. Counsel relied on certain decisions to which reference would be made at the later stage.

1 (2010) 322 ITR 158(SC)

5. On the other hand, the learned counsel Shri Joshi for the respondent-assessee opposed the appeal contending that full particulars were produced before the Department. CIT (Appeals) had also referred to the assessee's letter dated 20th September, 2010. Before the Tribunal the revenue had never questioned the existence of the said letter or of the certificate of the Chartered Accountant relied upon by the Tribunal.

6. Having heard learned counsel for the parties and having perused documents on record, we find that the Tribunal has given elaborate reasons for deleting the penalty. The record suggests that assessee had not offered certain receipts to tax under bonafide belief that the same was not taxable. Quite apart from the existence of the letter dated 20th September, 2010 not being disputed by the revenue either before the CIT (Appeals) or the Tribunal, during the assessment proceedings undoubtedly the assessee had made full representation why according to his belief the receipt was not chargeable to tax. Merely because the Assessing Officer did not accept such a stand of the assessee,

would not automatically permit revenue to levy penalty. So much, it made abundantly clear by the Supreme Court through series of judgments particularly in case of **Reliance Petroproducts Pvt. Limited (supra)**. Further, the reference to the Chartered Accountant's opinion in favour of the assessee made by the Tribunal also cannot be discarded. We do not find any assertion of the revenue at any stage of the proceedings that no such opinion existed.

7. We may now refer to the decision cited by Shri Chhotaray. In case of **Commissioner of Income tax Vs. A. Sreenivasa Pai**¹ Division Bench of Kerala High Court referred to the explanation added by the Finance Act, 1964 and subsequently, substituted in the year 1976 to Section 271 and observed that such explanation was introduced to shift the burden of proof from the revenue to the assessee. While doing so, the Court also observed that :-

"It is for the fact finding body to judge the relevancy and sufficiency of the materials. If such a fact finding body, bearing the aforesaid principles in mind, comes to a conclusion that the assessee had discharged the opinion, it becomes a conclusion of the fact and no question of law arises."

1 242 ITR 29

Reliance was placed on the decision of the Supreme Court in case of **Union of India and others Vs. Dharmendra Textiles Processors and others**¹, in which while examining the provisions of Section 11AC of the Central Excise Act, 1944 in the context of the penalty provisions contained in Section 271(1)(c) of the Act, it was observed that the penalty under the said provision is in the nature of the civil liability and the requirement of the mens-rea does not exist. Reliance was also placed on the decision of the Supreme Court in case of **Mak Data P. Ltd. Vs. Commissioner of Income Tax-II**² in which it was held that mere statement of an assessee that he had surrendered the additional income with a view to avoid litigation to buy peace would not be a proper defence under Section 271(1)(c) of the Act. These judgments thus cover different areas with which we are not concerned in the present appeal. We have given independent reasons for confirming the view of the Tribunal. No question of law in this respect arises.

1 (2008) 306 ITR 277(SC)

2 Civil Appeal No. 9772 of 2013 (SC)

8. The second question pertains to penalty for breach of Section 54EC of the Act. Amount involved is extremely small and we therefore, do not entertain the question without going into merits thereof. We however record the confession of Shri Joshi for the assessee that the question whether investment under section 54EC can be total of Rs.50 lakhs in all or would be capped to Rs.50 lakhs in a assessment year, permitting similar such investment in the next year was not free from doubt. The assessee had no intention to breach this ceiling.

9. Income Tax Appeal is dismissed.

(M.S.SANKLECHA,J.)

(AKIL KURESHI,J.)

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