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

INCOME TAX APPEAL NO.599 OF 2017

Principal Commissioner of Income Tax – 29 ... Appellant
versus
C. Raja ... Respondent

Mr. Arvind Pinto, for Appellant.
None for Respondent.

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE: 11th JUNE, 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). The following question is presented for our consideration :

(i) Whether in law and on the facts of the instant case was the Tribunal correct in law in upholding the cancellation of penalty imposed by the AO under Section 158BFA(2); a section that mandates the imposition of penalty in respect of the undisclosed income; where the words 'may direct' refer to variation of the penalty and not to its imposition ?

2. The issue pertains to penalty under Section 271(1)(c) of the Income Tax Act, 1961.

3. The assessee was subjected to search operation during which he admitted

undisclosed income of Rs.30 Lakhs. In the post search assessment, the Assessing Officer made further addition by disallowing certain labour charges holding that such expenditure was inflated.

4. The assessee carried the matter in Appeal. The Commissioner substantially reduced the said addition, which became final.

5. The Assessing Officer levied penalty both on income of Rs.30 Lakhs disclosed by the assessee during the search as well as on the additional income determined during the course of assessment. The assessee carried the matter in Appeal. The Commissioner by a detailed order, deleted the penalty in relation to the additional income. In relation to the disclosed income of Rs.30 Lakhs, the Commissioner (Appeals) requested the Assessing Officer to examine whether the conditions for dropping the penalty contained in Section 158BFA(2) having satisfied. The observations of the Commissioner in this respect can be noted :

> *"Since the undisclosed amount had been computed merely as an estimated rate which had subsequently been slashed down to again an estimated rate only to match the receipts or expenditure presumed to have been existing but unexplained. I hold that in the appellant's case no penalty was imposable beyond the disclosed amount let alone at an unreasoned percentage of 200.*
> *There is no consideration by the A.O. in his penalty order, that the said declared undisclosed income of Rs.30 Lac had been covered by the conditions laid down in the first proviso to Section 158 BFA(2). The A.O. has to take that into account. Otherwise, I find that no additional*

undisclosed income had been actually determined as any positive detection beyond what had been disclosed in the return by the appellant."

6. It can thus be seen that with respect to the additional income of Rs.30 Lakhs disclosed by the assessee, the Commissioner has not deleted penalty. He had merely asked the Assessing Officer to verify if the conditions for immunity from penalty contained in Section 158 BFA(2) is satisfied.

7. With respect to the rest of the component of the penalty, the Commissioner noted that Assessing Officer had made large additions on the basis of estimation. . Substantial portion of these additions were deleted by the Commissioner. Even that which was retained on the basis of estimates. It was in this respect that the Commissioner was of the opinion that the penalty could not have been imposed. The Tribunal reexamined the issue and concurred the view of the Commissioner.

8. Several courts have taken a view that penalty on addition made on mere estimation is not justifiable.

9. No question of law arises for consideration. The Income Tax Appeal is dismissed.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**