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

INCOME TAX APPEAL NO.67 OF 2017
WITH
INCOME TAX APPEAL NO.88 OF 2017

Principal Commissioner of Income Tax(Central)-4 … Appellant

V/s.

M/s Ashok Apparels Pvt. Ltd. … Respondent

WITH
INCOME TAX APPEAL NO.83 OF 2017

Principal Commissioner of Income Tax(Central)-4 … Appellant

V/s.

Smt. Amla Ashok Ruia … Respondent

Mr.Suresh Kumar for the Appellant in ITXA No.67 of 2017.
Mr.Tejveer Singh for the Appellant in ITXA Nos.88 of 2017 and 83 of 2017.
Mr.Percy Pardiwalla, Senior Counsel with Mr.Madhur Agrawal i/by Mr.Atul Jasani for the Respondents.

CORAM : AKIL KURESHI AND SARANG V.KOTWAL, JJ.
DATE : APRIL 8, 2019.

P.C.:-

1. These appeals arise in similar background. We may record facts from record of Appeal No.67 of 2017.

2. This appeal is filed by the revenue to challenge the judgment of the Income Tax Appellate Tribunal. Following question was presented for our consideration:-

> "Whether on the facts and in the circumstances of the case and in law, ITAT was justified in deleting the concealment penalty under Section 271(1)(c) levied by the Assessing Officer on a quantum of addition which has been confirmed by the Hon'ble High Court of Bombay?"

3. The issue pertains to penalty imposed by the Assessing Officer under Section 271(1)(c) of Income Tax Act, 1961 ("the Act" for short) against the respondent-assessee in relation to the assessee's return of income for the assessment year 2004-05. In such return, the assessee had shown certain derivative transactions and claimed a loss arising out of such transactions. The Assessing Officer was of the opinion that the transactions were speculative in nature and therefore, in terms of Section 43(5) of the Act, the loss arising out of such transactions, was a speculation loss. The issue reached the High Court at the hands of the revenue. The High Court allowed the revenue's appeal against which we are informed that Special Leave Petition is filed and appeal is

admitted. Parallelly the penalty proceedings ensued. The Tribunal while deleting the penalty observed that the assessee had raised a claim which was based on bonafide interpretation of the provisions of the Act, was not a case where assessee had made intentionally a wrong claim.

4. We are broadly in agreement with the view of the Tribunal. The assessee had made a bonafide claim. It may be that such claim was not accepted by the High Court. That by itself would not mean that the penalty should be confirmed. It is well settled that mere rejection of a claim otherwise made bonafide and on arguable legal contentions would not give rise to penalty proceedings. Reference in this respect can be made to the decision of the Supreme Court in case of **CIT Vs. Reliance Petro Products Ltd.**[1].

5. In the result, appeals are dismissed.

(SARANG V.KOTWAL,J.) **(AKIL KURESHI,J.)**

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1 322 ITR 158 (SC)