IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL No. 897/2016
WITH
INCOME TAX APPEAL No. 898/2016
WITH
INCOME TAX APPEAL No. 901/2016
WITH
INCOME TAX APPEAL No. 907/2016
WITH
INCOME TAX APPEAL No.914/2016

Pr Commissioner of Income-tax
(Central)Nagpur ..Appellant.
Vs
Rajkumar Gulab Badgujar ..Respondent.

Mr.Sham Walve for the Appellant.
Mr. Jitendra Jain a/with Mr. Manoj Gopal Agre for the Respondent.

CORAM : AKIL KURESHI &
B. P. COLABAWALLA, JJ.

DATED :- 8TH JANUARY, 2019.

P.C. :

1 The aforesaid appeals arise on common background and concern the same assessee, challenge the judgment of Income-Tax Appellate Tribunal (“**the Tribunal**” for short). The

following questions have been presented for our consideration.

> (a) Whether on the facts and circumstances of the present case the Tribunal was justified in deleting the penalty of Rs.4,473/- levied under Section 271 (1) (c) of the Income-Tax Act, 1961?
>
> (b) Whether on the facts of the case and in law, the Tribunal was justified in allowing the relief to the Assessee, ignoring the fact that the Assessee had not filed return of income voluntarily but only the date of search action which amounts to concealment of income with respect to the concerned year i.e. Assessment Year 2006-07?

2 The record would show that search and seizure action was carried out by the Revenue Authorities on Suyojit Group of Nashik on 17th September, 2010. Accordingly, during such search certain incriminating material pertaining to the assessee was found and seized by the Department. The assessee filed return of income for assessment years 2008-09, 2009-10 and 2010-2011 on 7th March 2011. This was done even before the Department issued notice under Section 153C of the Income Tax Act (**"the Act"** for short) declaring total income of Rs.60,74,594, Rs.78,434,31/- and 8,51,910/- respectively. For the remaining two Assessment Years 2005-06 and 2006-07 which would also be within the purview of proceedings under

Section 153C of the Act, the Assessee did not file the Returns of Income contending that for the said two Assessment Years the income was below the taxable limit. Subsequently, in response to notice under Section 153C of the Act, the Assessee also filed returns for the said two years declaring total income of Rs.8,957/- and Rs.43,857/-.

3 The Assessing Officer completed the assessment under Section 153C of the Act for all the assessment years. Admitted position is, in none of these years any addition was made over and above the declared income. The question of penalty under section 271C of the Act arises in background of such facts.

4 The Tribunal in the impugned judgment held that since there was no addition to the returned income of the assessee, penalty could not have been imposed, particularly, relying on Explanation 5A to Section 271(1)(c) of the Act.

5 Having heard the learned Counsel for the parties and having perused the documents on record, what emerges as an undisputed position is that the Assessee had filed returns of

income for three assessment years even before the notice under Section 153C of the Act was issued. For remaining two years the Assessee contended that no such return was required to be filed since his income did not exceed the taxable limit. This later assertion of the Assessee also was found to be true and correct since the Assessing Officer accepted the Assessee's declaration of meager income of Rs.18,957/- and Rs.43,857/- respectively for the said two assessment years 2005-06 and 2006-07.

6 In view of such facts, we find no error in the Tribunal holding that the penalty could not have been imposed. There was no question of the Assessee not declaring the income of the particulars of the income so as to invite penalty under Section 271C of the Act. The three returns had been filed even before issuance of notice under Section 153C of the Act and in other two cases as accepted by the Assessing Officer the Assessee had no taxable income. When there was no addition to the declared income in any of the years, penalty was correctly deleted by the Tribunal. Explanation 5A below Section 271 of the Act would apply only in case of searched person.

7 By virtue of such Explanation it may be open for the Revenue to levy penalty from such a person even in a case where there is no addition to the income declared by the searched person in the return filed pursuant to search. Nevertheless this Section is confined to searched person and cannot be extended to the person other than the searched person.

8 In the result, no question of law arises facts common in all. All the aforesaid appeals are dismissed.

(B. P. COLABAWALLA, J) (AKIL KURESHI, J)