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

INCOME TAX APPEAL NO. 19 OF 2018

Commissioner Of Income Tax -ltu ...Appellant
Versus
M/s Gujarat Ambuja Cements Limited ...Respondent

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Mr. Suresh Kumar for Appellant.

Mr. Niraj Sheth a/w Mr. Upendra Lokegaonkar i/b Mint and Confreres for Respondent.

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CORAM: K.R.SHRIRAM &
M.M.SATHAYE JJ.

DATE : 14th JUNE 2023

P.C. :-

1. Heard. The following three substantial questions of law are proposed:-

SUBSTANTIAL QUESTION OF LAW

a. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the penalty of Rs.8,05,562/- levied under Section 27(1)(c) of the Act on issue of leasehold premium levied by the Assessing Officer in respect of addition of Rs. 29,92.371/- which is wrongly claimed as deduction under Section 37(1) of the Income-tax Act, 1961 ?

b. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the penalty of Rs.92,95,993/- levied under Section 27(1)(c) of the Act in respect of exclusion of interest under Section 244A aggregating to Rs.2,41,45,436/-?

c. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the penalty of Rs.1,22,19,154/- levied under Section 27(1)(c) of the Act in respect of non-allowance of exclusion of capital *profits in computing book profit under Section 115JA of the Act ?*

2. The assessing officer had imposed penalty because of certain disallowance in the order of Assessing Office. That does not mean penalty is automatically levieable. CIT (A) interfered and set aside penalty levied by Assessing Officer. This has been upheld by ITAT. The ITAT has extensively dealt with each item under which penalty was imposed and has given reason why penalty was not levieable. We have also considered the order of Assessing Officer and are satisfied that ingredients required to impose penalty have not been satisfied. There is no finding in the order of Assessing Officer that explanation offered was found to be false or not bonafide. We would add that even in order of Assessing Officer an observation that explanation is false or not bonafide is not enough. It has to be substantiated in detail with explanation as to why the Assessing Officer has came to a conclusion that explanation offered was false or not bonafide.

3. In the circumstances, we see no reason to interfere. No substantial question of law arises. Appeal dismissed.

[M.M.SATHAYE,J.] **[K.R.SHRIRAM, J.]**