



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

INCOME TAX APPEAL NO. 785 OF 2017

Deepak Fertilizers and Petrochemicals
Corporation Limited ... Appellant
Vs.
Addl CIT, Range-3(1) ... Respondent

WITH
NOTICE OF MOTION NO. 1268 OF 2017
IN
INCOME TAX APPEAL NO. 785 OF 2017

Shri Suparas D Jain ... Applicant
[Associate Vice President
(Corporate Finance)]
[For Deepak Fertilizers and Petrochemicals
Corporation Limited

In the matter between:
Deepak Fertilizers and Petrochemicals ... Appellant
Corporation Limited
Vs.
Addl CIT, Range-3(1) ... Respondent

.....
Mr. J. D. Mistri, Senior Advocate a/w Mr. Sanjiv M. Shah for the
Appellant in Appeal and for the Applicant in Notice of Motion.

Mr. Tejveer Singh for the Respondent in both, the Appeal and the
Notice of Motion.

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**CORAM : S. C. DHARMADHIKARI &
SMT. VIBHA KANKANWADI, JJ.**

DATE : AUGUST 21, 2017.

P.C. :

1. Heard both sides. Perused the Application/Notice of Motion requesting an out of turn hearing for admission of this Appeal.
2. For the reasons set out in the affidavit-in-support, we grant the request of the appellant-assessee and take up the Appeal for admission forthwith.
3. *Prima facie*, the show cause notices, copies of which are at pages 174 and 176 of the paper book, did not indicate what is the lapse or act attributable to the assessee, for which the Revenue proposes a penalty.
4. *Prima facie*, the ingredients of Section 271 of the Income Tax Act, 1961 (for short, 'IT Act'), which alone are relevant for this case, are clear. Section 271 (1) Clauses (c) and (d) are very clear and it would have to be indicated as to what is the act attributable, whether it is concealment of the particulars of income or furnishing of inaccurate particulars of income or concealing the particulars of the fringe benefits or furnishing inaccurate particulars of such fringe benefits or failure to comply with the notices as are spelt out by Clause (b) of Sub-section (1) of Section 271 of the IT Act. The satisfaction has to be clearly spelt out and which we do not think is spelt out from the present show cause notices

5. Hence the Appeal raises the following questions of law. It is admitted on the following substantial questions of law:

- i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in approving penalty of Rs.26,87,196/- under Section 271(1)(c) of the Act?
- ii) Whether on the facts and in the circumstances of the case and in law, was justified in not appreciating that the Assessing Officer ought to have made his mind whether initiation of penalty is on account of furnishing of inaccurate particulars or concealment of income in accordance with the ratio laid down in the decision of this Honourable Court in CIT v. Samson Perinchery 392 ITR 4?

6. Heard both sides on the point of stay.

7. Once we have admitted the Appeal on substantial questions of law, we do not think that there is any justification for the Deputy Commissioner of Income Tax, Central Circle-8(1) to threaten the appellant/applicant with any prosecution. Even if such prosecution is launched, the same shall not proceed till the pendency of this Appeal. The Notice of Motion is made absolute in terms of prayer clause (a).

(SMT. VIBHA KANKANWADI, J.)

(S. C. DHARMADHIKARI, J.)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

**NOTICE OF MOTION NO. 84 OF 2019
IN
INCOME TAX APPEAL NO. 738 OF 2016**

M. Suresh Company Pvt Ltd .. Applicant

In the Matter Between:-

M. Suresh Company Pvt Ltd .. Appellant

Vs

Pr. Commissioner of Income Tax -5 .. Respondent

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- Mr. V. Sridharan, Sr. Counsel a/w Mr. B.V. Jhaveri for the Applicant / Appellant
 - Mr. N.C. Mohanty for the Respondent
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**CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.**

DATE : JANUARY 25, 2019.

P.C.:

1. This Motion is taken by the appellant assessee in Income Tax Appeal No. 738 of 2016. The appeal arises out of a judgment of the Income Tax Appellate Tribunal confirming penalty against the assessee under Section 271(1)(c) of the Income Tax Act, 1961. The appeal is admitted. Substantial question of law is also framed. Pending such appeal, the Competent Authority has issued a show cause notice to the appellant why the prosecution should not be launched

pursuant to such penalty order.

2. We are informed that the appellant has paid up the entire penalty in terms of the penalty order. Considering such fact and also considering the fact that the appeal against the penalty is admitted and the substantial question of law framed by the Court is pending for consideration, we stay the operation of the penalty order. We notice that similar modality was adopted by this Court in order dated 21.8.2017 passed in Income Tax Appeal No. 785 of 2017. Resultantly, at this stage, there would no question of launching prosecution. With these directions, Motion is disposed of.

[M.S. SANKLECHA, J.]

[AKIL KURESHI, J]