

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

INCOME TAX APPEAL NO. 1363 OF 2015
WITH
INCOME TAX APPEAL NO. 1358 OF 2015
WITH
INCOME TAX APPEAL NO. 1359 OF 2015

Commissioner of Income Tax-2 .. Appellant

v/s.

M/s. L & T Finance Ltd. ..Respondent

Mr. Suresh Kumar for the appellant
Mr. Niraj Sheth i/b Atul Jasani for the respondent

**CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.**

DATED : 4th JUNE, 2018.

PC.

1. These three Appeals under Section 260-A of the Income Tax Act, 1961 (the Act) challenge the common order dated 19th March, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Years 1995-96, 1996-97 and 1997-98. Thus, the three appeals.

2. The Revenue has urged only the following identical re-framed question of law in all three appeals for our consideration :-

(i) *Whether in the facts and circumstances of the case and in law, the Tribunal was justified in deleting the penalty levied under Section 271(1)(c) of the Act?*

3. The respondent assessee had claimed depreciation in respect of the assets acquired / purchased from the lessee and given back on lease basis popularly called “sale and lease back”. In quantum proceedings, the Tribunal by order dated 30th April, 2014 has held the respondent assessee entitled to claim depreciation on the assets used on sale and lease back basis. This by following the decision of the Supreme Court in *ICDS Ltd. Vs. Commissioner of Income Tax, 350 ITR 527*.

4. Being aggrieved by the order dated 30th April, 2014 of the Tribunal in quantum proceedings, the Revenue had filed three appeals being Income Tax Appeal Nos.1625 of 2014, 1670 of 2014 and 1694 of 2014 in this Court. On 8th March, 2017 all the three appeals were admitted on identical substantial question of law, which reads as under :-

“1. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing depreciation on assets given on sale and lease back basis when the transactions were purely financial transactions?”

5. In the meantime, pending disposal of the quantum appeal by the Tribunal, the Deputy Commissioner of Income Tax imposed penalty

under Section 271(1)(c) of the Act by three separate orders all dated 29th March, 2011 in respect of the Assessment Years 1995-96, 1996-97 and 1997-98. This by following the decision of the Delhi High Court in the case of ***Commissioner of Income Tax Vs. Zoom Communication Pvt. Ltd. 371 ITR 570.*** Finally, the Tribunal by the impugned order dated 19th March, 2015 allowed the respondent's appeals in penalty proceedings. This by holding that on merits it had by its order dated 30th April, 2014 in quantum proceedings for all the three years, held that the respondent assessee is entitled to the claim of depreciation on its assets as claimed. Thus, deleted the penalty.

6. The Revenue seeks admission of these appeals from the impugned order dated 19th March, 2015 deleting penalty under Section 271(1)(c) of the Act on the ground that the appeals in the quantum proceedings have been admitted by this Court. It is a settled position in law that mere rejection of a claim made by the assessee would not *ipso facto* result in penalty under Section 271(1)(c) of the Act. In fact, in ***Commissioner of Income Tax Vs. Reliance Petroproducts Pvt. Ltd. 2010 (11) SCC 762***, the Apex Court observed that “*Merely because the assessee's had claimed the expenditure, which claim was not accepted or not acceptable to the Revenue, that by itself would not in our opinion*

attract penalty under Section 271(1)(c)". Before penalty can be imposed under Section 271(1)(c) of the Act, the Revenue in terms thereof must be satisfied that the assessee had concealed particulars of income or furnished inaccurate particulars of his income. In case, where an assessee makes a complete disclosure of facts it then cannot be said to have concealed the particulars of income or furnished inaccurate particulars of income. Thus, mere making a claim for benefit under a particular provision of law would not attract penalty under Section 271(1)(c) of the Act if there is absence of concealment and / or furnishing of inaccurate particulars of income. This has been so held by the Apex Court in *Reliance Petroproducts Pvt. Ltd. (supra)*.

7. We called upon Mr. Suresh Kumar, learned Counsel appearing for the Revenue to show us a finding by the Authorities under the Act that there has been concealment of particulars of income or furnishing inaccurate particulars of income on the part of the respondent assessee. In fact, we perused the orders of the Assessing Officer imposing penalty as well as the order of the Commissioner of Income Tax (Appeals) [CIT(A)] upholding the penalty and also the impugned order of the Tribunal. In none of these orders there is any whisper of the alleged particulars of income which has been concealed or what particulars of

income which have been filed is inaccurate. Mere using the words that there has concealment of income and / or furnishing inaccurate particulars of income would not in the absence of same being particularized, lead to imposition of penalty. It is only when the specified officer of the Revenue is satisfied that there has been concealment of particulars of income or furnishing inaccurate particulars of income that the occasion to explain the conduct in terms of Explanation-I to Section 271(1)(c) of the Act would arise.

8. In the facts of the present case, we are dealing with the assessments relating to Assessment Years 1995-96, 1996-97 and 1997-98. The position in law at that point of time was not clear. It is not a case of the Revenue that the respondent assessee has claimed depreciation in the face of a statutory provision or a binding decision of a Court, prohibiting the assessee from claiming depreciation in respect of the assets on sale and lease back basis. Till such time as the Apex Court rendered its decision in ICDS Ltd. (supra) in an Income Tax case, the position was not clear. Therefore, at the relevant time, when the assessee made a claim for depreciation, there was no statutory provision or a decision contrary to the stand taken by the assessee which has been shown to us. It is pertinent to note that in the order

dated 30th April, 2014 in quantum proceedings, the Tribunal has read the decision in case of ICDS Ltd. (supra) of the Apex Court covering the issue in favour of the assessee even in case of finance lease. Thus, the issue in respect of claim made is clearly debatable. It is further to be noted that it is not the case of the revenue in the absence of particularization that the basis of the claim was by suppression / concealment of income or filing of inaccurate particulars of income. Once suppression or filing of inaccurate particulars is absent, no penalty is imposable only for making a claim not acceptable to the Revenue.

9. Further, reliance by the impugned order dated 19th March, 2015 upon the decision of the Delhi High Court in *Zoom Communication Pvt. Ltd.* (supra) is based on the fact that the claim made by the assessee therein was without any foundation. Further, in the above case, it was pointed that it was apparent that the respondent therein was not acting *bona fide* while making claim for deduction. Moreover, the same had not been added back in the computation of income due to oversight. Thus, prima facie there was inaccurate filing of particulars of income. Moreover, the assessee in the above case was unable to explain to the satisfaction of the Authorities as to the circumstances which led to the

mistake in having made a claim for deduction, which was not added back while computing the income. It was in these circumstances, the penalty upon an assessee under Section 271(1)(c) of the Act was upheld.

10. The present facts are completely different. The claim made by the respondent assessee was *bona fide* and not in the face of a statutory provision or any binding decision. In fact, the issue raised herein stands covered in favour of the respondent assessee by the decision of the Apex Court in *Reliance Petroproducts Pvt. Ltd.* (supra) where it has been observed that making of incorrect claim in law would not by itself amount to concealment of income or giving inaccurate particulars of income. The words concealment or giving inaccurate particulars of income have to be read strictly before the penalty provisions under Section 271(1)(c) of the Act can be invoked. In the present facts, the Revenue has not been able to show even remotely that there is any concealment of income or filing of inaccurate particulars of income.

11. In the aforesaid circumstances, the question as proposed stands concluded against the appellant revenue by the decision of the Apex Court in *Reliance Petroproducts Pvt. Ltd.* (supra). In the above view, the

question as proposed does not give rise to any substantial question of law. Thus, not entertained.

12. Accordingly, all the three appeals are dismissed. No order as to costs.

(SANDEEP K. SHINDE J.)

(M.S. SANKLECHA, J.)

