



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

INCOME TAX APPEAL NO. 1906 OF 2018

Pr. Commissioner of Income Tax-16 ...Appellant

Versus

Jayesh V. Sheth ...Respondent

WITH
INCOME TAX APPEAL NO. 2713 OF 2018

Pr. Commissioner of Income Tax-16 ...Appellant

Versus

Jayesh V. Sheth ...Respondent

Mr Suresh Kumar, for the Appellant.

Ms Neelam Jadhav, for the Respondent.

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 6 March 2025

PC:-

1. ITXA Appeal 2713 of 2018 Not on board. Upon mentioning taken on board.
2. This appeal, ITXA 1906 of 2018, is instituted by the appellant-revenue for the assessment year 2011-12, challenging the common order of the Tribunal dated 20 September 2017 for the Assessment Years (AY) 2010-11,

2011-12, and 2012-13.

3. In so far as the Tribunal's order for AY 2012-13 is concerned, the appellant-revenue filed an appeal before this Court, ITXA No.2172 of 2018. The said appeal (ITXA No. 2172 of 2018) was withdrawn because the tax effect involved is less than what is prescribed in the CBDT circular dated 17 September 2024.

4. In the appeal listed today i.e. ITXA No.1906 of 2018 for AY 2011-12, in the appeal memo the tax effect mentioned is NIL. However, the issue involved is whether the CIT under Section 263 of the Act can direct the assessing officer to initiate a concealment penalty, which the assessing officer had not initiated in the assessment order.

5. Mr. Suresh Kumar learned counsel for the appellant-revenue relied upon decision of the Allahabad High Court in the case of *CIT Vs Surendra Prasad Agrawal*¹ in support of his submission that such a direction can be given under Section 263. However, both counsels submit that this Court has not decided on this issue.

6. Assuming we accept the decision of the Allahabad High Court has laying down the correct law, the penalty which could be levied for AY 2011-12 would be tax calculated on Rs.1,30,00,000/-, being the amount surrendered by the assessee during the course of the survey. The tax on this Rs.1.30 crore, assuming rate to tax is 33%, will work out to Rs.42,90,000/-. The minimum penalty which could be levied would be 100% of such tax i.e. Rs.42,90,000/- and the maximum would be 300% would be Rs.1,28,70,000/-. In

¹ (2005) 142 Taxman 653 (Allahabad)

either case, the penalty amount will not exceed Rs.2 Crore, which is the amount prescribed in the CBDT circular dated 17 September 2024.

7. Therefore, adjudication of the question raised in this appeal would become academic. In the light of this fact and the CBDT Circular dated 17 September 2024, and order passed by this Court in ITXA No.2172 of 2018, the present appeal would not be required to be entertained. We, therefore, decline to admit this appeal. However the substantial questions of law is kept open.

8. Ms. Neelam Jadhav learned counsel for the respondent-assessee relied upon decision of the Gujrat High Court in the case of *PCIT Vs Vinodbhai Parekh*² in support of her submission that CBDT circular on tax effect are also applicable to the orders passed under Section 263 of the Act.

9. For the reasons stated above, appeal No.2713 of 2018 for AY 2010-11, which is not on board but taken on board on mentioning, is also disposed of.

10. Both the appeals are disposed of.

(Jitendra Jain, J)

(M.S. Sonak, J)

² (2020) 429 ITR 225