

IN THE HIGH COURT OF BOMBAY

Income Tax Appeal No.1133 of 2008

**THE COMMISSIONER OF INCOME TAX
MUMBAI CITY-23**

Vs

M/s MANSUKH DEYING & PRINTING MILLS

Mohit S Shah, CJ And M S Sanklecha, J

Dated: June 24, 2013

Appellant Rep by: Mr. Arvind Pinto

Respondent Rep by: Mr. Satish Mody and Ms. Aasifa Khan

JUDGEMENT

PC:-

This Appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act"), challenges the order of the Income Tax Appellate Tribunal (in short "the Tribunal"), Mumbai dated 27 February, 2008 upholding the order of CIT(A) deleting penalty under Section 271 (1)(c) of the said Act.

2 This Appeal relates to Assessment Year 1992-93.

3 The Revenue has raised the following question of law for consideration of this Court:

Whether the ITAT is right in law and in facts in dismissing the appeal of the Revenue and in canceling the penalty of Rs.53,05,857/u/ s. 271 (1)(c) of the Income Tax Act, 1961 despite the assessee concealing particulars of income and despite the ITAT's order (against quantum assessment) deleting the addition made on account of capital gains u/s. 45 (4) of the Income Tax Act, being appealed before this Court being contrary to the decision of jurisdictional High Court in case of CIT v/s. A. N. Naik Associates 265 ITR 346 (Bom), and with to ratio of the decision of Supreme Court in CGT v/s. Chhotelal Mohan Lal 166 ITR 124 (SC).

4 During the assessment proceeding for the Assessment Year 1992-93, the Assessing Officer had assessed an amount of Rs.2.63 Crores being goodwill as chargeable to capital gain tax on account of the fact that the above amount was debited to partners capital accounts during the assessment year 1992-93. The Assessing Officer while passing the assessment order also directed that penalty proceedings be initiated under Section 271(1)(c) of the said Act against the respondent assessee.

5 The respondent assessee in response to notice under Section 274 r/w Section 271 (1)(c) of the Act pointed out that no penalty is imposable even if, their contention that no capital gains tax on account of goodwill is payable, is not found acceptable on merits. This is for the reason that

there was no concealment of any income nor furnishing of any inaccurate particulars of income on its part. The respondent assessee had not offered the amount attributable to goodwill to tax after having fully disclosed all facts in its return of income and balance sheet which was filed by them. However, the Assessing Officer did not accept the submission and imposed penalty of Rs.53.05 lakhs upon the respondent assessee on the ground that there was a blatant violation of law on the part of the respondent assessee in having acted in breach of Section 45 (4) of the said Act.

6 Being aggrieved, the respondent assessee filed an Appeal with the CIT(A). By an order dated 27 November, 2006, the CIT(A) set aside the order of the Assessing Officer and held that no penalty is imposable upon the respondent assessee. This was on the ground that for the Assessment Year 1992-93, the Tribunal had by its order dated 26 October, 2006 allowed the claim of the respondent assessee on merits. Moreover, the CIT(A) held that the penalty has been imposed merely on account of a different interpretation being given to the provisions by the revenue from that given by the respondent assessee. In these circumstances also, the CIT(A) held that no penalty under Section 271(1)(c) of the said Act was imposable upon the respondent assessee.

7 The Revenue carried the matter in the Appeal to the Tribunal. The Tribunal by its order dated 27 February 2008 upheld the order of the CIT(A) deleting the penalty levied under Section 271(1)(c) of the said Act. This was on account of the fact that on merits, by an order dated 26 October 2006, the Tribunal had accepted the respondent assessee's stand that no capital gain tax is payable by writing off the goodwill in the books of accounts by debiting the partners account.

8 The Revenue's grievance against the impugned order is that on merits, they have filed an Appeal from the order dated 26 October 2006 to the Tribunal. Consequently, the Tribunal ought to have awaited the decision of this Court before upholding the deletion of penalty under Section 271(1)(c) of the said Act as done by the CIT(A). Even otherwise, it is the revenue's submission that there has been blatant violation of the law on the part of the respondent assessee in not appreciating Section 45(4) of the said Act and also not following the decision of this Court in the matter of *CIT (A) v/s. A. N. Naik Associates reported in 265 ITR 346*. As against the above, the Counsel for the respondent assessee submits that there was complete disclosure on their part inasmuch as the return of income as well as the balance sheet filed along with return of income disclosed the writing off of the goodwill amount by debiting the partners capital account. Consequently, no penalty is imposable upon the respondent assessee under Section 271(1)(c) of the said act.

9 On facts, we find that there has been no concealment of particulars of income or furnishing of inaccurate particulars of income on the part of the respondent assessee in filing its return of income. At the highest, the claim made by the respondent assessee that the amount attributable to the goodwill amount which was written off is not chargeable to tax was not accepted by the revenue. In such circumstances, merely making of a claim which is found to be not sustainable and would not warrant imposition of penalty under Section 271 (1)(c) of the said Act as held by the Supreme Court in the matter of *CIT v/s. Reliance Petro Products Ltd. reported in 321 ITR 158*. The sinequanon for imposition of penalty under Section 271 (1)(c) of the said Act is concealment of income or furnishing inaccurate particulars of income which is admittedly not so in this case. Moreover the view taken by the respondent assessee was a possible view as the Tribunal by order dated 26 October 2006 in quantum appeal accepted the view.

10 In view of the above facts, the issue with regard to nonimposition of penalty in the absence of concealment of income or furnishing of inaccurate particulars stands concluded in favour of the respondent assessee by the decision of the Supreme Court in the matter of Reliance Petro Products (supra), we see no reason to entertain the proposed question of law.

11 Accordingly, appeal is dismissed with no order as to costs.