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

INCOME TAX APPEAL NO. 412 OF 2013

Commissioner of Income Tax-12 ..Appellant

Vs.

M/s S.M. Construction ..Respondent

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Mr. P.C. Chhotaray, Advocate for Appellant.
Mr. K. Gopal a/w Mr. Jitendra Singh Advocates for Respondent.

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CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 03 MARCH 2015

P.C.:

This appeal by the Revenue under Section 260-A of the Income Tax Act, 1961 challenges the order dated 22 July 2012 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). By the impugned order, the Tribunal dismissed the revenue's appeal from the order dated 20 June 2011 passed by the Commissioner of Income Tax (Appeals) (the 'CIT (A)') deleting a penalty of Rs.13.30 Lakhs imposed under Section 271(1)(c) of the Act by the Assessing Officer.

2. The appellant-revenue has formulated the following questions of law for our consideration:

> *"(a) Whether on the fact and circumstance of the case, the Tribunal is right in upholding the decision of the*

CIT(A) in deleting the penalty u/s 271(1)(c) of the Act of Rs.13,30,917/- irrespective of the fact that the assessee had claimed the Receipt of Rs.1.11 crore as capital receipt in order to evade tax

(b) Whether on the fact and circumstance of the case, the Tribunal failed to appreciate that the fact of the case are squarely covered by the facts of the case of CIT Vs. Zoom Communication Pvt. Ltd. 327 ITR 510"

3. The respondent-assessee had on 27 January 1995 entered into a Development Agreement with the owners of land at Pune by paying a consideration of Rs.54 Lakhs. During the previous year relevant to the subject Assessment Year 2005-06 the aforesaid agreement dated 27 July 1995 was canceled and the owners of the land paid the petitioners a sum of Rs.1.65 Crores (including the amount of Rs.54 Lakhs originally paid by the respondent-assessee). The respondent-assessee was of the view that the amount of Rs.1.11 Crores (Rs.1.65 Crores less R. 54 Lakhs) was not income but capital receipt which is not chargeable to tax as capital gains. The aforesaid view was reflected in the notes forming part of the Accounts as well as in the covering letter dated 29 October 2005 accompanying its Return of Income.

4. The Assessing Officer did not accept the contention of the respondent-assessee and held that the receipt to be taxable under the

head of Capital Gains and after allowing expenses brought to the tax an amount of Rs.69.92 Lakhs as Capital Gains. The respondent-assessee being aggrieved with the order of the Assessing Officer agitated the matter before the CIT (A) but without any success. Thereafter, the respondent-assessee accepted the finality of the order passed by the Assessing Officer bringing to tax an amount of Rs.69.92 Lakhs under the head Capital Gains.

5. Thereafter, the Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act against the respondent-assessee. The Assessing Officer did not accept the respondent-assessee's contention that as complete disclosure of facts had been made and the claim made is bonafide no penalty is imposable in view of the decision of the Apex Court in CIT Vs. Reliance Petroproducts Pvt. Ltd. reported in 322 ITR 158. The Assessing Officer held that the respondent-assessee had filed inaccurate particulars and imposed penalty of Rs.13.13 Lakhs under Section 271(1)(c) of the Act.

6. In appeal, the CIT (A) rendered a finding of fact that the assessee has disclosed the receipt of the above amount of Rs.1.11 Crores and a claim unsustainable in law will not amount to furnishing of inaccurate particulars. It further held that the Assessing Officer had not given any finding that the receipt of the aforesaid amount was not

intimated to the Assessing Officer. The CIT (A) was of the view that the decision of Apex Court in Reliance Petroproducts Pvt. Ltd. (supra) applied to the present facts and deleted the penalty.

7. On further appeal by the Revenue, the Tribunal, by the impugned order upheld the order of CIT (A). The Tribunal in the impugned order held that the petitioner had disclosed that an amount of Rs.1.11 Crores was received on account of a project not being fructified, had credited the same to the partner's capital account and it was not being offered to tax as the same was a receipt on capital account outside the scope of Section 45 of the Act. The Tribunal also noted that there was letter which accompanied the return of income wherein all facts relating to aforesaid receipt was indicated including the fact that an amount of Rs.54 Lakhs originally paid to the vendor under the development agreement in 1995 and on cancellation of agreement, the original vendor of the land paid to the respondent-assessee an amount of Rs.1.65 Crores including an amount of Rs.45 Lakhs which was originally paid by the assessee. The Tribunal also records that the Assessing Officer was well aware of this letter and the Note to Account being a part of the balance sheet of the assessee filed also disclosed the above facts. On the aforesaid facts, the Tribunal has held that the decision of the Apex Court in Reliance Petroproducts Pvt. Ltd. (supra) would apply and rendered a

finding of fact that all facts had been disclosed by the respondent-assessee alongwith its return of income including its claim of not being chargeable to tax. This claim was not found to be not bonafide. The Tribunal also held that the reliance placed on the decision of Delhi High Court in the case of CIT Vs. Zoom Communication P. Ltd. reported in 327 ITR 510 by the Revenue is inappropriate as in that case the assessee had deliberately debited the amount to Profit and Loss Account though not in accordance with law and the conduct of petitioner in Zoom Communication was held to be not bonafide. Accordingly, the order of the CIT (A) was upheld.

8. The revenue's grievance with the impugned order is that it proceeds on a fundamental error that there has been full and complete disclosure on the part of the respondent-assessee. This is so as the disclosure is only of Rs. 1.11 Crores and not of Rs.1.65 Crores which was the amount received by the respondent-assessee on relinquishment of its rights to immovable property. It is also contended by the revenue that the decision of Delhi High Court in Zoom Communication P. Ltd. is applicable to the present facts and the appeal should be admitted.

9. We find that the respondent-assessee had originally paid an amount of Rs.54 Lakhs as a consideration for the development agreement in 1995. In the previous year relevant to assessment year, the

respondent-assessee received from the vendor an amount of Rs.1.65 Crores which included an amount of Rs.54 Lakhs which was originally paid in 1995 by the assessee to the vendor. Therefore, only an amount of Rs.1.11 Crores which was received in excess of amount paid by the respondent-assessee to the original vendor could be a subject matter of taxation and we find that the disclosure of Rs.1.11 Crores which was made by the petitioners as a part of its notes to accounts as well as letter dated 29 October 2005 alongwith its claim of not being taxable was filed along with the Return of Income. Thus there has been a complete disclosure of all facts as held by CIT(A) and the Tribunal. Besides the claim made by the respondent-assessee of not being taxable was not found to be not bonafide. As held by the Supreme Court in Reliance Petroproducts Pvt. Ltd. (supra) making of an incorrect claim would not tantamount to furnishing inaccurate particulars of income. In this case, the assessee bonafide believed that the difference of Rs.1.65 Crores and Rs.55 Lakhs is not chargeable to tax and had so stated before the Assessing Officer. The fact that the explanation of assessee is not accepted in quantum proceedings would not ipso facto visit the assessee with penalty in the absence of the claim being held to be not bonafide. The decision of the Delhi High Court in Zoom Communication P. Ltd. (supra) is not applicable in the present facts for the reason that in this

case, the stand taken by the respondent could be said to be in defiance of law and thus not bonafide. In this case it is not the case of revenue that the claim made by the petitioner was not on the basis of bonafide view. We find that on appreciation of the facts, two authorities have concurrently come to finding of fact that there was complete disclosure of facts and the claim made though not found acceptable was bonafide to conclude that no penalty be visited on respondent-assessee. In light of the above finding of facts, we find that no substantial question of law arises for our consideration.

10. Accordingly, appeal dismissed. No order as to costs.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**