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

INCOME TAX APPEAL NO.2753 OF 2010

The Commissioner of Income Tax-10, Mumbai      ....Appellant  
V/s.  
M/s.Wander Pvt. Ltd.      ....Respondent

Mr.Suresh Kumar for the Appellant.

Mr.Pankaj Toprani i/b Ms.Usha I. Dalal for the Respondent.

**CORAM : S.J. VAZIFDAR AND**  
**M.S. SANKLECHA, JJ.**  
**DATE : 21ST AUGUST, 2012.**

**P.C. :-**

1. This is an appeal under section 260(A) of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal dismissing the appellant's appeal being ITA No.3995/Mum/2006 pertaining to the assessment year 1997-1998.

2. The appellant has sought to raise the following questions of law :-

“(a). Whether on the facts and circumstances of the case and in law, the ITAT was justified in law in restoring the issue of levy of penalty in this case to Assessing Officer with a direction that he should decide the issue of the levy of penalty after receipt of the decision of the Hon'ble High Court on the quantum appeal filed by the assessee ?

(b) Whether on the facts and circumstances of the case and in law, the ITAT has the power to issue such directions to the Assessing Officer in view of the fact that any order as per the provisions of the section 275(1A) can be passed only if the relevant assessment gets revised by giving effect to the order of the Commissioner (Appeals), or the Appellate Tribunal or, the High Court or, the Supreme Court ?

(c) Whether on the facts and circumstances of the case and in law, the ITAT has the power to issue such directions to the Assessing Officer in view of the fact that any order as per the provisions of section 275(1A) can be passed only if an order passed under section 275(1) is subsisting on the date of passing of order under section 275(1A) ?

(d) Whether on the facts and circumstances of the case and in law, the ITAT has the power to issue such directions to the Assessing Officer which in effect extends the time limit for passing the penalty order under section 275(1) to a period beyond the period of six months from the end of the month in which the order of the Appellate Tribunal on the relevant assessment order is received by the Chief Commissioner or the Commission ?”

3. The issues do not give rise to a substantial question of law. The respondent's appeal against the order of the Tribunal in the quantum proceedings has been admitted by this Court. In view thereof, the Tribunal, instead of deciding this issue as to penalty under section 271, by the impugned order restored the same to the file of the Assessing Officer with a direction to decide the issue of levy of penalty after the decision of this Court in the said appeal. The Tribunal accordingly set-aside the order of the CIT (A) and directed

the AO to give the respondent a reasonable opportunity of being heard before passing the order upon remand.

4. As noted earlier, the appeal against the quantum proceedings has been admitted and is pending hearing in this Court. If the appellant succeeds in the quantum proceedings, it would not even be necessary to consider the proceedings under section 271. In the circumstances, no prejudice has been caused to the appellant even qua the penalty proceedings.

5. The apprehension that any order in the penalty proceedings may be barred by limitation under section 275(1A), is not well founded. In any event, the apprehension is set at rest by directing that in the event the same being held to be barred by limitation, this appeal shall stand revived automatically and without further orders of this Court.

6. Subject to the same, the appeal is dismissed.

**(M.S. SANKLECHA, J.)**

**(S.J. VAZIFDAR, J.)**