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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
INCOME TAX APPEAL (LOD) NO.2117 OF 2012

Commissioner of Income Tax-I, Mumbai ..Appellant.

V/s.

M/s. Bennett Coleman & Co. Ltd. ..Respondent.

Mr. Suresh Kumar for the appellant.

Mr. Jas Sanghavi i/b. PDS Legal for the respondent.

CORAM : J.P. DEVADHAR AND  
M.S. SANKLECHA, JJ.

DATED : 26TH FEBRUARY, 2013

**P.C. :-**

1. In this appeal by the revenue for the assessment year 1999-2000, following questions of law have been raised for our consideration :-

- (i) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in cancelling the penalty levied of Rs.26,25,000/- u/s.271(1)(c) in the light of decision of Supreme Court in the case of Goetzd India Ltd. (284 ITR 323) (SC) in respect of addition of Rs.75,00,000/- on account of interest received on 6% Government of India Capital Index tax free

bonds which was accepted by the assessee during the course of assessment proceedings vide reply dated 28/2/2002 and not offered voluntarily ?

- (ii) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in cancelling the penalty levied of Rs.35,64,000/- u/s.271(1)(c) in respect of addition made on account of treating premium received on redemption of debentures as income from other sources against claim of assessee as capital gain ?

2. So far as question (i) is concerned, the respondent- assessee has claimed deduction of interest on tax free bonds of Rs.5,60,11,644/-. During the course of the assessment proceedings, the assessee was asked to give details of interest on tax free bonds. While preparing the said details, it was noticed that 6% Government of India Capital Index Bonds purchased during the year had inadvertently been categorized as tax free bonds and, therefore, interest of Rs.75,00,000/- earned on such bonds had also inadvertently escaped tax. The assessing officer levied penalty under Section 271(1)(c) of the Income Tax Act, 1961 (the Act). The CIT(A) upheld the order of the Assessing Officer. On further appeal, the Tribunal in the impugned order records a finding of fact that by inadvertent mistake interest @ 6% on the Government of India Capital Index Bonds was shown as tax free bonds. The Tribunal concluded that there was no desire on the

part of the respondent-assessee to hide or conceal the income so as to avoid payment of tax on interest from the bonds. In that view of the matter, the Tribunal deleted the penalty imposed upon the respondent-assessee under Section 271(1)(c) of the Act. In view of the fact that the decision of the Tribunal is based on finding of fact that there was an inadvertent mistake on the part of the assessee in including the interest received of 6% on the Government of India Capital Index Bonds as interest received on tax free bonds. It is not contended by the Revenue that above finding of fact by the Tribunal is perverse. In these circumstances, we see no reason to entertain the proposed question (i).

3. So far as question (ii) is concerned, the respondent-assessee had claimed premium on redemption of debentures as income from capital gains. Whereas the assessing officer held that the redemption of debentures is revenue receipt assessable to tax under the head income from other sources. The CIT(A) confirmed the order of the assessing officer. The respondent-assessee did not file any further appeal on the quantum proceedings. Thereafter, the assessing officer levied penalty under Section 271(1)(c) of the Act on the respondent-assessee. The CIT(A) also confirmed the levy of penalty upon the respondent-assessee. On further appeal, the Tribunal held

that there is no dispute with regard to the fact that the respondent-assessee had disclosed that the amount received as premium on redemption of debentures in its computation of income. Further, the Tribunal records that it is not the case of the department that the respondent-assessee had concealed any particulars of income or furnished inaccurate particulars of income by stating incorrect facts. The assessing officer considered the said premium received on redemption of debentures to be taxable under the head income from other sources while the respondent-assessee considered the same to be taxable under the head capital gains. In view of the fact that there is only a change of head of income and in the absence of any facts that the claim of the assessee was not bonafide, the Tribunal deleted the penalty imposed under Section 271(1)(c) of the Act. The revenue has not been able to point out that the finding of the Tribunal is perverse. In these circumstances, we see no reason to entertain the proposed question (ii).

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

(M.S. SANKLECHA, J.)

(J.P. DEVADHAR, J.)