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

INCOME TAX APPEAL NO.5195 OF 2010

Harish P Mashruwala, Mumbai

..Appellant.

Versus

The Assistant Commissioner of Income-tax, 15(1),
Bombay – 400 007 & Others

..Respondents.

Mr.Subramaniam with Mr.V.S. Hadade for the appellant.
Mr.D.K. Kamwal for the respondents.

**CORAM : J.P. Devadhar &
K.K. Tated, JJ.**

DATE : 22nd September 2011

P.C. :

1. Whether the Income Tax Appellate Tribunal ('Tribunal' for short) was justified in deleting the penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 ('Act' for short) is the question raised in this appeal.
2. The assessment year involved herein is AY 1996-97.
3. In the present case, the assessee had filed return of income on 24th June 1996 declaring income of Rs.17,00,000/- as long term capital gains arising on surrender of tenancy rights and paid tax at the rate of 20%.
4. The assessing officer disallowed the claim of the assessee by

holding that the alleged agreement to surrender the tenancy is dated 7th October 1995, whereas the amount in question relating the alleged transfer of tenancy were credited to the account of the assessee's proprietary concern during the period from June 1995 to August 1995 i.e. prior to the alleged transfer of tenancy. Thus, the assessing officer rejected the claim of the assessee that the amount of Rs.17,00,000/- represented the gains arising from the surrender of tenancy rights and assessed the same as the undisclosed income of the assessee. Appeal filed by the assessee was rejected by the Commissioner of Income Tax (Appeals) and the order of the Commissioner of Income Tax (Appeals) was upheld by the Tribunal. Thus, the amount of Rs.17,00,000/- represented the undisclosed income of the assessee has attained finality. The undisclosed income has been assessed under the head 'income from other sources' and taxed at 30%.

5. Thereafter, penalty proceedings were initiated and the assessing officer imposed 200% penalty upon the assessee under Section 271(1)(c) of the Act. On appeal filed by the assessee, the Commissioner of Income Tax (Appeals) has reduced the penalty to 100%. The order of the Commissioner of Income Tax (Appeals) has been upheld by the Tribunal. Challenging the aforesaid order, the assessee has filed the present appeal.

6. The argument advanced by the counsel for the appellant – assessee is that, in the present case, the assessee has neither concealed income nor furnished inaccurate particulars of income. Relying upon the

decision of this Court in the case of *Commissioner of Income Tax V/s. Tridhara Investments Private Limited* (Income Tax Appeal No.4045 of 2010) decided on 4th August 2011 and a decision of the Delhi High Court in the case of *Commissioner of Income Tax V/s. SAS Pharmaceuticals* reported in (2011) 335 ITR 259 (Delhi), counsel for the assessee submitted that in the absence of any additions made in the assessment order, merely because the claim made by the assessee for assessment under one head is rejected by the assessing officer and the said income is assessed under some other head, then the imposition of penalty under Section 271(1)(c) of the Act is not justified.

7. We find no merit in the above contentions raised by the counsel for the assessee. In the present case the declaration made by the assessee in the return of income was that the amount of Rs.17,00,000/- represents the long term capital gain arising on surrender of tenancy rights and accordingly the assessee paid taxes under the head 'income from capital gains' at the rate of 20%. The above declaration made by the assessee has been found to be false by the assessing officer and the same has been upheld by the Commissioner of Income Tax (Appeals) and thereafter by the Income Tax Appellate Tribunal. Thus, in the present case, the penalty is imposed not because the amount offered by the assessee has been assessed under a heading other than the heading declared by the assessee, but the penalty has been levied on account of the fact that the declaration made by the assessee

regarding the source from which the income and Rs.17,00,000/- has been earned has been found to be incorrect. Thus, the decisions relied upon by the counsel for the assessee are distinguishable on facts.

8. In this view of the matter, once the declaration made in the return of income itself is found to be incorrect, it would obviously amount to furnishing inaccurate particulars of income and consequently the provisions of Section 271(1)(c) of the Act would be attracted. In the result, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

(K.K. Tated, J.)

(J.P. Devadhar, J.)