

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1261 OF 2008

The Commissioner of Income Tax ... Appellant

Versus

Smt. Lata Shantilal Shah ... Respondent

Mr. K.R. Choudhari for the Appellant.

Mr. K. Gopal with Mr. Jitendra Singh for Respondent.

CORAM: F.I. REBELLO, &  
R.S. MOHITE, JJ.

DATED: JANUARY 20, 2009

P.C.

. The Revenue is in appeal against the order of ITAT and they have raised the following question :

"Whether on the facts and circumstances of the case and in law, the Hon'ble Tribunal has erred in deleting the penalty observing that as the assessee had not filed return of income on the ground that assessee had concealed or furnished inaccurate particulars of income?"

. In the instant case, what is relevant are the provisions of Section 271 (1)(c) which reads as under :

"(1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act is satisfied that any person -

(a) .....

(b).....

(c) has concealed the particulars of his income or furnished inaccurate particulars of such fringe benefits, he may direct that such person shall pay by way of penalty-....."

. Explanation (3) to Section 271 reads as under :

"Where any person who has not previously been assessed under this Act fails, without reasonable cause to furnish within the period specified in sub section (1) of section 153 a return of his income which he is required to furnished under section 139 in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause (i)....."

. By Finance Act, 2002 with effect from 1.4.2003, the words "who has not previously been assessed under this Act" were omitted.

. We are concerned with the Assessment year 1997-98. In other words, what we have to see is the provision as it then stood previous to its amendment. There is categorical finding that the assessee had earlier filed returns. Penalty is

sought to be imposed on the ground of failure to file returns. The wording in Section 271(1)(c) are in case where returns have not been filed or furnished inaccurate particulars of income. Clearly the assessee's case would not fall under Section 271(1)(c).

. The tribunal by its impugned order has noted that the said provision would not be attracted. As in the facts of this case, the assessee in fact had earlier filed returns.

. On behalf of the Revenue the learned counsel sought to import explanation (1) to Section 271. In our opinion, this was not an issue either before the A.O. or Commissioner of Income Tax (Appeals) or before the I.T.A.T. The question must arise from the order of the tribunal. In our opinion, therefore, the question as raised would not arise. Consequently appeal dismissed.

(R.S. MOHITE, J.)

(F.I. REBELLO, J.)