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

INCOME TAX APPEAL (L) NO.368 OF 2011

The Director of Income Tax
(International Taxation) - II, Mumbai

..Appellant.

Versus

Gartner Ireland Limited, Mumbai

..Respondent.

Mr.Suresh Kumar for the appellant.
None for the respondent.

**CORAM : J.P. Devadhar &
A.A. Sayed, JJ.**

DATE : 20th July, 2011.

P.C. :

1. Whether the Income Tax Appellate Tribunal was justified in deleting the penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 is the question raised in this appeal.
2. The assessment year involved herein is assessment year 2004-05.
3. In the assessment year in question, the assessee filed return of income and claimed refund of tax on the ground that the amount of royalty received by the assessee was covered under Article 7 of the Double Taxation Avoidance Agreement between India and Ireland. The Assessing Officer disagreed with the contention of the assessee and taxed the royalty income at Rs.62.21 lakhs and levied penalty under Section 271(1)(c) of the Income Tax Act, 1961.

4. The Commissioner of Income Tax (Appeals) deleted the penalty on the ground that the assessment has been made on the basis of the facts disclosed by the assessee. The Tribunal confirmed the order of the Commissioner of Income Tax (Appeals) inter alia on the ground that the quantum addition made by the Assessing Officer itself has been deleted by the Tribunal.

5. Counsel for the Revenue informs the Court that the Revenue has filed an appeal against the decision of the Tribunal deleting the quantum addition in the present case and the same is pending. In our opinion, the fact that the appeal against the deletion of the quantum addition is pending before this Court, cannot be a ground to sustain the penalty imposed under Section 271(1)(c) of the Income Tax Act, 1961 because the quantum addition itself was made on the basis of the return filed by the assessee which is found to be correct. Merely because the assessee's contention that the royalty income is exempt was not acceptable to the Assessing Officer cannot be a ground to impose penalty under Section 271(1)(c) of the Income Tax Act, 1961.

6. In this view of the matter, we see no merit in the appeal. The appeal is accordingly dismissed with no order as to costs.

(A.A. Sayed, J.)

(J.P. Devadhar, J.)