

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**ITA 683/2012**

**CIT ..... Appellant**

**Through: Mr. N P Sahni, sr. standing counsel**

**versus**

**AMIT JAIN ..... Respondent**

**Through: Mr. Piyush Kaushik, Adv.**

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE R.V.EASWAR**

**ORDER**

**21.12.2012**

The question of law sought to be urged by the revenue in this appeal against the order dated 16.2.2012 of the ITAT in ITA No.5596/Del./2011 is whether the Tribunal fell into error in directing deletion of the penalty under Section 271(1)(c).

2. The assessee declared an income of `2,60,73,558/- from short term capital gains. The assessing officer on an interpretation of the relevant provisions and having regard to the nature of transactions assessed it as income from business. He also levied penalty under Section 271(1)(c) to the tune of `58,45,899/- on the ground that assessee had produced inaccurate particulars. The CIT(Appeals) on being approached by the assessee cancelled the penalty; the revenue unsuccessfully appealed to the Tribunal.

3. This Court notices that the Tribunal while upholding the order of the appellate commissioner relied upon the decision in CIT Vs. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC). Furthermore, the record reveals that the amount in question, which formed the basis for the assessing officer to levy penalty ? was in fact truthfully reported in the returns. In view of this circumstance, that the assessing officer chose to treat the income under some other head cannot characterize the particulars or reported in the return as an ?inaccurate particulars? or as suppression of facts. The Court is also conscious of the decision of the Supreme Court in Calcutta Discount Co. Ltd. vs. Income Tax Officer (1961) 41 ITR 191 (SC) where it was held that it is up to the assessing officer to interpret the return and discern as to which head of income the amount had to be brought to tax.

In view of the above circumstance, this Court is of the view that no substantial question of law arises for consideration and the same is dismissed.

**S. RAVINDRA BHAT, J**

**R.V.EASWAR, J**

**DECEMBER 21, 2012**

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