

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.**

INCOME TAX APPEAL (L) NO.2989 OF 2009

The Commissioner of Income Tax-5. ...Appellant.
Vs.
M/s.Super & Stainless Hi Alloys Ltd. ...Respondent.
....
Ms.Padma Divakar for the Appellant.
Ms.Aasifa Khan for the Respondent.

.....
**CORAM : DR.D.Y.CHANDRACHUD AND
J.P.DEVADHAR, JJ.**

February 9, 2010.

P.C. :

The office objections are overruled and the Registry is directed to number the appeal.

The only question which has been raised by the Revenue under Section 260A of the Income Tax Act, 1961 is whether the ITAT was justified in affirming the order of the CIT (Appeals) in so far as the imposition of a penalty under Section 271(1)(c) was directed to be deleted. The Tribunal has observed that the assessee was under the bona fide belief that it was entitled to claim depreciation. The assessee was a BIFR Company governed by the

Sick Industrial Companies (Special) Provisions Act, 1985. There is also a finding that in the assessment proceedings under Section 143(3), the Assessing Officer took the view that the Assessee is not entitled to claim depreciation. The assessee accepted this view and filed a revised return withdrawing the depreciation claimed and reducing the returned loss. On these facts, the finding of the Tribunal is that the explanation of the assessee was bona fide and that a penalty under Section 271(1)(c) should not be imposed. No substantial question of law would arise. The appeal shall accordingly stand dismissed.

(Dr.D.Y.Chandrachud, J.)

(J.P.Devadhar, J.)