

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

INCOME TAX APPEAL NO.2867 of 2009

Commissioner of Income Tax-20. ...Appellant
Vs.
Ashish R.Kacholia. ...Respondent

....
Ms.Suchitra Kamble for the Appellant.
Mr.S.C. Tiwari for the Respondent.

.....

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

16 June 2010.

P.C. :

Though four questions of law have been framed in the appeal by the Revenue, Counsel appearing on behalf of the Revenue fairly states that the only question of law which will arise in this appeal, and which has not been formulated in the Memo, relates to the validity of the order of the Tribunal confirming the deletion of the penalty imposed under Section 271(1)(c) of the Income Tax Act, 1961. The appeal has accordingly been heard with the consent of both the Learned Counsel, confined to the question of penalty.

2. While deleting the penalty, the Commissioner (Appeals) observed that the assessee had furnished all details along with return of income and the discrepancy which occurred in the original and revised returns of income, was on account of calculation error attributable to the office of the earlier representative of the assessee. Moreover, the income which had been assessed by the Assessing Officer and the Appellate Authority was on the basis of the statement of the assessee himself filed along with return of income and nothing was deduced otherwise than what was disclosed.

3. The Tribunal also observed in paragraph 10 of its decision that the assessee has filed the original return of income disclosing short term capital gain and the revised return of income excluding the short term capital gain. This resulted in the claim being disallowed by treating it as “income from business or profession” and also as long term capital gain. This consequently resulted in a difference in the returned income and the assessed income. The explanation of the assessee was not found to be

faulted. Hence, Explanation (1) to Section 271(1)(c) was attracted. The Commissioner (Appeals) has perused the records filed by the assessee and the additional evidence which was also forwarded to the Assessing Officer who had verified the same and found it to be accurate. There is, therefore, no want of bona fides on the part of the assessee.

4. Having regard to the these findings, which have been arrived at, the deletion of the penalty cannot be faulted. The appeal will not give rise to any substantial question of law and is accordingly dismissed.

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

(J.P.Devadhar, J.)