

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

INCOME TAX APPEAL NO.2739 OF 2009

The Commissioner of Income Tax-2,
Mumbai

..Appellant.

Vs.

Himanand Trading and Services Pvt. Ltd.

..Respondent.

....

Mr. Ram Upadhyay for the Appellant.

Mr. Jitendra Jain with Mr. B.D. Damodar i/b Kanga & Co. for the
Respondent.

.....

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

15 June 2010.

P.C. :

The Tribunal has held that no case has been made out for imposing a penalty under Section 271(1)(c) of the Income Tax Act, 1961. The penalty was accordingly deleted. The Tribunal has noted that the assessee had filed a copy of the balance sheet and Profit and Loss Account from which it emerged that as on 31 March 2000 there was an unsecured loan of Rs.2.05 Crores. The assessee had made an interest payment of Rs.34.85 lacs to Cable Corporation of India from

whom the loan was obtained. The assessee had long term investments in 1,53,500 shares of the said company. As there were no other instances of investments, the Assessing Officer and the Commissioner (Appeals) came to the conclusion that the assessee was not carrying on any business activity. The Tribunal, however, held that this in itself was not sufficient to impose a penalty. A finding of fact has been recorded that the assessee had furnished all particulars necessary for the computation of its income and hence it could not be said that there was any concealment of or the furnishing of inaccurate particulars of income. The view which has been taken by the Tribunal is consistent with the recent judgment of the Supreme Court in **Commissioner of Income Tax v. Reliance Petroproducts Private Limited**¹ where the Supreme Court held that a mere making of a claim which is not sustainable in law by itself will not amount to furnishing inaccurate particulars regarding the income of the assessee. In the present case, the assessee as the Tribunal noted had furnished all particulars necessary for the computation of income and there was no concealment or furnishing of inaccurate particulars.

1 (2010) 322 ITR 158(SC)

Hence, no case for imposition of penalty was made out. The appeal does not raise any substantial question of law and is accordingly dismissed.

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

(J.P. Devadhar, J.)