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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1498 OF 2014

The Commissioner of Income Tax-21 ... Appellant

vs.

M/s.Advaita Estate Development Pvt. Ltd. ... Respondent

.....

Mr. Tejveer Singh for the Appellant.

Mr. Sameer Dalal for the Respondent.

.....

CORAM : M.S.SANKLECHA &
A.K. MENON, JJ.DATE : 17th FEBRUARY, 2017

P.C. :

1. This Appeal under section 260A of the Income Tax Act, 1961 (the 'Act') by the Revenue challenges the impugned order dated 27th August, 2013 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The impugned order relates to the Assessment year 2006-07.

2. The Revenue urges the following question of law for our consideration:-

1. *“Whether on the facts and circumstances of the case and in law, the Tribunal was justified in deleting the penalty imposed under section 271(1)(c) ?*

3. The impugned order of the Tribunal allowed the respondent-assessee's appeal and deleted the penalty imposed. This on the ground that the order of the Tribunal in the quantum proceeding which was against respondent-assessee had been challenged in appeal before this Court and the appeal has been admitted on 12th March, 2013 being Income Tax Appeal No. 2582 of 2011 on the following substantial questions of law :

“(a) Whether on the facts and in the circumstances of case and in law, is the order of the Tribunal perverse inasmuch as it ignored the basic documents like Statement of Confirmation of Account, Bank Statement showing receipt of money from and payment of money to M/s.Kuber Developers Corporation and Confirmation from the said party of having given and receipt of the advance which were produced before the CIT(A) and the Tribunal while confirming the addition of Rs.2.73 crores under Section 68 of the Act in the hands of the Appellant ?”

(b) Whether on the facts and in the circumstances of the case and in law, was the Tribunal justified in not admitting the additional evidence of loan creditor. Mr. Mahendra Mansingh Arora in the form of Return of Income, Balance Sheet and Profit & Loss Account for Assessment Year 2006-07 filed before the I.T. Department on the ground that the same were not filed before the Respondent no.2 earlier without appreciating that the Appellant cannot be penalized for the default of loan creditor ?”

4. In the above view, the impugned order followed its decision in ***Nayan Builders and Developers Pvt.Ltd. vs. The Income Tax Officer*** in Income Tax Appeal No. 2379/Mum/2009 rendered on 18th March, 2011 and the decision of

the Delhi High Court in *CIT vs Liquid Investment and Trading Co* (ITA No.240/2009) rendered on 5th October, 2010 to hold that when an appeal has been admitted in quantum proceedings by the High Court, then that itself is an evidence of the issue being debatable, not warranting any penalty.

5. The Revenue had filed an appeal from the order of the Tribunal in Nayan Builders and Developers Pvt. Ltd. (supra) deleting the penalty. This appeal being *CIT vs. Nayan Builders and Developers [(2014) 368 ITR 722]* was not entertained by this Court. It upheld the view of the Tribunal that the imposition of penalty was not justified as admission of appeal in quantum proceeding on this issue as substantial question of law was proof enough of the issue being debatable.

The aforesaid decision in Nayan Builders and Developers Pvt.Ltd (supra) was also followed by this Court in *CIT-8 vs. Aditya Birla Power Co. Ltd.* in Income Tax Appeal No. 851 of 2014 rendered on 2nd December, 2015 .

6. However, Mr. Tejveer Singh, learned Counsel appearing for the appellant-Revenue seeks to distinguish the decision of this Court in Nayan Builders and Developers Pvt. Ltd. (supra) on the ground that this Court had after recording the fact that where appeals from orders in quantum proceedings of this Court have been admitted as giving rise to substantial question of law then that itself discloses that the issue is debatable. However, Mr. Singh points out that it also further records *"In our view there was no case made out for imposition of penalty and the same was rightly set aside."* On the basis of the above observation, it is

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contention of Mr. Tejveer Singh that the appeal from penalty proceeding was not admitted by this Court as on merits no case for imposition of penalty was made out.

7. Mr. Dalal, the learned Counsel for the respondent-assessee invited our attention to the order of the Tribunal dated 18th March, 2011 in the case of Nayan Builders and Developers Pvt. Ltd (supra). On perusal of the Tribunal order dated 18th March, 2011 we note that the Tribunal in Nayan Builders and Developers Pvt. Ltd (supra) had deleted the penalty only on the ground that as substantial question of law had been admitted by this Court in quantum proceedings the issue is debatable. It was on the basis of the aforesaid reasoning of the Tribunal in Nayan Builders and Developers Pvt.Ltd. (supra), that this Court held that no penalty is imposable. Thus the distinction sought to be made by Mr. Tejveer Singh does not assist the Revenue, as it does not exist.

8. In view of the decision taken by this Court in Nayan Builders and Developers Pvt. Ltd (supra) as well as in Aditya Birla Power Co. Ltd. (supra) the proposed question does not give rise to any substantial question of law. Thus not entertained.

9. Therefore, the Appeal is dismissed. No order as to costs.

(A.K. MENON,J.)

(M. S. SANKLECHA,J.)

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