

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**TAX APPEAL NO.445 of 2015**

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PRINCIPAL COMMISSIONER OF INCOME TAX-I,....Appellant(s)  
Versus  
VALIBHAI KHANBHAI MANKAD....Opponent(s)

=====

Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No.1

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CORAM: **HONOURABLE MS. JUSTICE HARSHA DEVANI**  
and  
**HONOURABLE MR. JUSTICE A.G.URAIZEE**

**Date : 07/09/2015**

**ORAL ORDER**  
**(PER : HONOURABLE MS. JUSTICE HARSHA DEVANI)**

1. The appellant revenue in this appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") has challenged the order dated 27<sup>th</sup> February, 2015 made by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A' in I.T.A. No.1960/Ahd/2011 by proposing the following question stated to be a substantial question of law:-

*"Whether the Appellate Tribunal was right in law and on facts in deleting the penalty of Rs.2,81,24,572/- levied u/s 271(1)(c) of the Income Tax Act?"*

2. The assessment year is 2006-07. The assessment under sub-section (3) of section 143 of the Act came to be framed by an order dated 6<sup>th</sup> December, 2008 whereby the Assessing Officer made various disallowances and additions.

The Assessing Officer also initiated penalty proceedings under section 271(1)(c) of the Act and by order dated 17<sup>th</sup> March, 2011, imposed penalty of Rs.2,81,24,512/-. The assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals) who allowed the appeal and deleted the penalty. The Revenue went in appeal before the Tribunal but failed.

3. Mrs. Mauna Bhatt, learned senior standing counsel for the appellant assailed the impugned order by submitting that the Tribunal has failed to consider that the penalty had been levied by the Assessing Officer as the assessee has shown additional income after the same was detected during the course of survey action under section 133A of the Income Tax Act. That the Tribunal had also failed to appreciate the fact that the assessee had filed his return beyond the period prescribed under sub-section (1) of section 139 of the Act. Moreover, the assessee had filed the return of income consequent to the survey under section 133A of the Act and hence, had furnished inaccurate particulars of income of Rs.7,93,34,193/- by non-compliance of filing Form 15I and 15J to the Commissioner of Income Tax, thereby defeating the purpose of rule 29D. It was accordingly urged that the appeal requires consideration and the question as proposed or as may be deemed fit, may be formulated by this court.

4. This court has considered the submissions advanced by the learned counsel for the appellant and has perused the impugned order passed by the Tribunal as well as the order of penalty made under section 271(1)(c) of the Act and the order passed by the Commissioner (Appeals).

5. From the findings recorded by the Tribunal, it is evident that the factum of deletion of addition in respect of non-deduction of tax by the assessee was not controverted by the revenue. The Tribunal has further found that the penalty had been levied on the amount which was reflected in the original return as income. That it was an undisputed fact that the assessee had declared this income in his original return of income, although it was a belated return. The Tribunal was of the view that as per the provisions of section 271(1)(c) of the Act, penalty can be imposed if the assessee had concealed the particulars of income or has furnished inaccurate particulars of such income. That in the present case, there was no dispute with regard to the fact that the particulars of income were reflected in the return of income. Moreover, it was not the case of the revenue that the returns of income filed were invalid and in fact, the Assessing Officer had proceeded on the basis of the return filed by the assessee and particulars furnished therein. From the findings recorded by the Tribunal, it is evident that the Tribunal has found as a matter of fact that there was no concealment of particulars of income on the part of the respondent assessee and in fact, the Assessing Officer had proceeded on the basis of the return filed by the assessee and particulars furnished therein. Under the circumstances, in the absence of any concealment of the particulars of income or furnishing of inaccurate particulars of income on the part of the assessee, no infirmity can be found in the impugned order passed by the Tribunal in confirming the order passed by the Commissioner (Appeals) in deleting the penalty under section 271(1)(c) of the Act. In the absence of any infirmity in the impugned order passed by the Tribunal, it is not possible to

state that the impugned order gives rise to any question of law much less, any substantial question of law so as to warrant interference. The appeal is accordingly dismissed.

( Harsha Devani, J. )

( A.G. Uraizee, J. )

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