

No penalty if wife offered due tax during assessment on sum received being beneficiary of her deceased husband: HC

Summary – The High Court of Bombay in a recent case of Smt. Madhuri Satish Misal, (the Assessee) held that where assessee was a beneficiary of amount received as a consequence of transfer executed by her husband of which she had no knowledge and she offered that during assessment proceedings, penalty provision u/s 271(1)(c) not attracted

Facts

- For the assessment year 2008-09, the assessee filed the return declaring a certain income.
- The Assessing Officer made an addition of Rs. 1.11 crores in relation to transferable development rights (TDR) sale receipts to the income of the assessee. He further considered the said amount to be concealed income of the assessee and levied the penalty upon her under section 271(1)(c).
- The Commissioner (Appeals) deleted the penalty levied upon the assessee.
- The Tribunal upheld the order of the Commissioner (Appeals).
- On appeal to High Court by revenue:

Held

- The argument of the revenue was that because the assessee came forward to disclose the income only during the assessment proceedings, the penalty has been correctly levied. The Tribunal found, in relation to each of the income on the touchstone of which the penalty was imposed, that the amounts were deposited in the bank account. They reflected transferable development right sales executed by the deceased husband prior to 2002. The assessee explained that neither she was the owner of the TDR assets nor was she party to the sale transaction. The transaction was executed by her deceased husband. The amounts were received by the assessee as a result of the dispute being settled in Court. Such receipt was treated as capital receipt not chargeable to tax and, therefore, it was not offered to tax in the return of income. However, during the course of the assessment the assessee agreed to pay tax on the same and that is how the sum of Rs. 1.11 crores was added to the total income.
- It is that amount which has been subjected to levy of penalty primarily on the ground that the assessee agreed to the addition and did not challenge it in appeal. The Tribunal in its order considered the principles which have to be invoked and applied for levy of penalty, the plain language of the statutory provision and the peculiar facts. Once the assessee is a beneficiary of the amount received as a consequence of the transfer executed by her husband of which she had no knowledge and she offered that during the assessment proceedings, that does not mean that her

act can be brought within the penalty provision. The explanation rendered by the assessee is *bona fide*. There was no factual dispute. Therefore, in the facts and circumstances of the case, the Tribunal held that the assessee has discharged the primary burden. There was no material brought by the revenue to show that the explanation of the assessee is either false or lacking in *bona fides*. It is in these circumstances, the Commissioner was justified in deleting the penalty. That view of the Commissioner was upheld. The penalty is deleted essentially in the above factual background. There is, therefore, no substantial question of law arising in this appeal.