

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

BEFORE SHRI B.R.BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No 5103 to 5105/MUM/2014
Assessment Year: 2001-02 & 2002-03**

Shri. Sunil Gavaskar. 8-A, Sportsfield, Khan Abdul Gaffoor Khan Road, Worli, Mumbai- 400 018 PAN:- AAAPG0001B	Vs.	The ITO (International Taxation)- 3(1), 1 st Floor, Room No. 114, Scindia House, Narottam Morarji Road, Ballard Estate, Mumbai- 400 038.
(Appellant)		(Respondent)

Appellant by : Shri. D.V. Lakhani
Respondent by : Shri. A.K.Kardam

Date of Hearing: 20/10/2016
Date of Pronouncement: 28/10/2016

ORDER

PER RAM LAL NEGI, JM

The appellant/assessee has preferred these appeals against two orders dated 28/03/2014 passed by the CIT(Appeals)-10 Mumbai, pertaining to the Asst. Years 2001-02 & 2002-03. ITA No 5103 and 5104 have been filed against the orders of the Ld. CIT(A), whereby the Ld. CIT(A) confirmed the penalty levied by the A.O u/s 271 (1)(c) of the Income Tax Act, 1961 (in short 'the Act'). The 3rd appeal has been filed by the assessee against order dated 28/03/2014 passed by the Ld. CIT(A)-10, Mumbai, whereby the Ld. CIT(A) dismissed the appeal filed by the appellant/assessee against order dated 31/03/2011 passed by the A.O u/s 154 of the Act, 1961 by rectifying the order passed u/s 147 r/w section 147 of the Act. Since all the appeals pertain to the same assessee and

issues involved are common in all the three appeals, the same were clubbed and heard together and are being disposed of by this common order for the sake of convenience.

ITA No. 5103/Mum/2014 A.Y. 2001-02

2. Brief facts of the case are that the assessee filed his return of income for the A.Y. 2000-01 declaring total income of Rs. 1,20,65,650/-. The assessment order was accordingly passed u/s 143(3) of the Act, determining the total income of the assessee at Rs. 1,20,65,650/- Subsequently it was noticed that there is escapement of income by claiming deduction, u/s 80-RR of the Act to the tune of Rs. 97,71,079/- being 60% of professional income received by the appellant from foreign sources amounting to Rs. 1,62,85,132/-. The assessment was reopened and after disallowing the deduction of Rs. 97,71,079/- the AO determined the total income at Rs. 2,18,57,339/- and also initiated proceeding u/s 271(1)(c) for furnishing inaccurate particulars of income/concealment of income. In appeal the Ld. CIT(A) confirmed the penalty order. The assessee in appeal before the Tribunal against impugned order passed by the Ld. CIT(A) on the following effective grounds of appeal:-

1."On the facts & circumstances of the case the Learned Commr. Of Income Tax (Appeals) has erred in confirming the levy of penalty u/s 271(1)(c) of Income Tax Act, 1961. The appellant prays that the basic conditions of Section 271(1)(c) are not satisfied and order passed by Learned Assessing Officer and confirmed by the Commr. of Income tax(Appeals) is bad in law. The appellant prays that penalty levied u/s 271(1)(c) may be deleted."

2."On the facts & circumstances of the case the Learned Commr. Of Income Tax (Appeals) has erred in confirming the levy of penalty u/s

271(1)(c) at Rs. 34,29,649/-. The appellant prays that the penalty levied u/s 271(1)(c) amounting to Rs. 34,29,649/- may be deleted.”

3.”On the facts & circumstances of the case the Learned Commr. Of Income Tax (Appeals) has not dealt with the issues raised by the appellant in the written submissions filed in the appellate proceedings. The Learned Commr. of Income Tax (Appeals) has rejected the submissions of the appellant and without dealing with the case laws on which reliance was placed by the appellant in the appellate proceedings. The appellant prays that the action of the Learned Commr. of Income tax(Appeals) in confirming the levy of penalty is not justified.

4. The Learned Commr. of Income Tax (Appeals) has erred in concluding that the appellant is not entitled to deduction u/s 80RR of Income-tax Act, 1961 but has not concluded as to how the appellant has furnished inaccurate particulars and tried to conceal the particulars of income. The Learned Commr. of Income Tax (Appeals) has not given any finding regarding the issue as to how the appellant has committed default u/s 271(1)(c). The appellant prays that order passed by the learned Commr. of income tax (Appeals) is not justified.

5. On the facts & Circumstances of the case the appellant prays that the issue regarding the allowability of claim is a legal issue and the Department had already accepted the claim once in the original assessment proceedings. The full facts were disclosed at the time of filing the return. In case of a legal issue there would be more than one view. Based on this factual position the appellant prays that penalty levied u/s 271(1)(c) may be deleted.

3. At the outset, the Ld. Counsel for the assessee submitted that the Tribunal has deleted the additions in quantum appeal (ITA No. 3970/Mum/2010 for the A.Y. 2001-02 & ITA No. 3971/Mum/2010 for the A.Y. 2002-03) vide order dated 16/03/2016. Therefore, the penalty appeal for the A.Y's 2001-02 & 2002-03 do not survive. The Ld. Counsel also placed on record the order passed by the co-ordinate Bench of the Tribunal in quantum appeal.

4. The Ld. Departmental Representative did not controvert the fact that the additions, on the basis of which the penalty orders pertaining to the assessment years 2001-02 & 2002-03 were passes, have been deleted in second appeal by the ITAT.

5. We have heard the parties and also perused the documents on record including the order passed the co-ordinate Bench in quantum appeal. In quantum appeal the issues before the coordinate Bench for adjudication were whether, the Ld. CIT(A) has erred in holding that notice issued u/s 148 of the Act was valid and reassessment proceedings were validly initiated and secondly, whether the Ld. CIT(A) has erred in confirming the assessment order rejecting the claim of the appellant u/s 80RR of the Act, amounting to Rs. 97,71,079/-? The co-ordinate Bench after hearing both the parties replied both the question in affirmative and accordingly deleted the addition made by the AO, rejecting the claim of the assessee.

6. Since, the addition, on the basis of which the penalty in question was imposed by the AO and confirmed by the Ld. CIT(A), has been deleted by the coordinate Bench, the penalty order does not survive. We, therefore, set aside the impugned order passed by the Ld. CIT(A) and allow the appeal of the assessee.

ITA No. 5104/Mum/2014 A.Y. 2002-03

The facts of the present appeal are similar to facts of the appeal of the assessee in ITA No. 5103/Mum/2014 for the A.Y. 2001-02 (except the amount of disallowance and penalty) and the issue involved in the present appeal is also identical to the issue involved in the said appeal. Since we have allowed the appeal of the assessee for the assessment year 2001-02, we also allow the appeal of the assessee for the Asst. Year 2002-03 on the same reasoning.

ITA No. 5105/Mum/2014 A.Y. 2002-03

In this case it was seen from the assessment record for Asst. year 1999-2000 that during the financial year 2001-05 relevant to assessment year 2002-03, the assessee was granted refund of Rs. 8,06,946/- after adjustment of MRBI Rs. 3,96,333/- which included interest u/s 244A of Rs. 1,92,109/- allowed to the assessee u/s 244A of the Act, was not offered by the assessee for taxation during the year of receipt i.e. Asst. year 2002-03 and this has resulted in under assessment of income of Rs. 1,92,109/-. The mistake being apparent, the assessee was given an opportunity of being heard in the matter by issue of notice u/s 154 of the Act and after hearing the assessee determined the total income of the assessee afresh. The assessee challenged the said order before the Ld. CIT(A) and Ld. CIT(A) dismissed the appeal of the assessee and confirmed the action of the AO. The assessee is in appeal against the impugned order passed by the Ld. CIT(A).

2. The assessee challenged the impugned order on the following effective grounds of appeal:-

- 1. On the facts & circumstances of the case the appellant prays that the order passed by the Learned Assessing Officer u/s 154 of the*

Income Tax Act, 1961 and confirmed by Learned Commr, of Income Tax (Appeals), is bad in a law may be cancelled.

2. On the facts & circumstances of the case the appellant prays that the order passed u/s 154 of the Income Tax Act, 1961 is beyond the prescribed time limit specified u/s 154 of the Income Tax Act, 1961. The order passed by the Learned Assessing Officer and confirmed by Learned Commr. of Income Tax (Appeals) is against the provisions of Income Tax Act, 1961 and may be cancelled.

3. On the facts & circumstances of the case the appellant prays that there is no mistake apparent from record in respect of the reassessment order passed u/s 143(3) r.w.s. 147 of Income Tax Act, 1961. As there was no mistake apparent from record the order passed u/s 154 may be cancelled.

4. On the facts & circumstances of the case the appellant submits that the reassessment order is itself subject matter of challenge and the matter is pending before Income Tax Appellate Tribunal. If the reassessment proceedings itself is treated as invalid the consequential order passed u/s 154 will also not survive. Based on these facts the appellant prays that order passed u/s 154 may be cancelled.

3. Since in the quantum appeal pertaining to the Asst. 2002-03, the coordinate Bench has quashed the assessment order passed u/s 143(3) r/w section 147 of the Act, holding that the reassessment proceeding is bad in law and further holding that the assessee is entitled for claim u/s 80RR of the Act, the rectification order u/s 154 of the Act does not survive. Hence, the order

passed by the Ld. CIT(A) will also not survive. We, therefore, set aside the impugned order passed by the Ld. CIT(A) and allow the appeal of the assessee.

4. In the result, all the three appeals filed by the assessee for Asst. years 2001-02 & 2002-03 are allowed.

Pronounced on 28th Oct, 2016

Sd/-

(B.R.BASKARAN)

ACCOUNTANT MEMBER

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated:28/10/2016

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

Pramila