

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI RAMIT KOCHAR, AM**

ITA No.4450/Mum/2015
(A.Y:2007-08)

ITA No.4451/Mum/2015
(A.Y:2008-09)

Fazal Sarang 302 Shabnam Apartment 33, S.V. Rd, Andheri (W) Mumbai-58	Vs.	Dy. Commissioner of Income Tax, Mumbai,
Appellant	..	Respondent
PAN No. AABPS9385F		
Assessee by	..	Shri M.P. Chhaged, AR
Revenue by	..	Shri B Satyanarayan Raju, DR
Date of hearing	..	11-04-2017
Date of pronouncement	..	11-04-2017

ORDER

PER MAHAVIR SINGH, JM:

These two appeals by the assessee are arising out of the common order of CIT(A)-53, Mumbai, in appeal No. CIT(A)-41/DCCC-36/IT-28/13-14 dated 24-03-2015. The Assessments were framed by DCIT Centre Circle-36, Mumbai for the A.Y. 2007-08 & 2008-09 vide order dated 27-12-2010 u/s 143(3)/153A of the Income Tax Act, 1961 (hereinafter ‘the Act’). The penalties were levied for both the AYs. under section 271(1)(c) of the Act vide orders both dated 26-03-2013.

2. The only issue in these two appeals of assessee is against the orders of CIT(A) confirming the penalties levied by AO. For this assessee has raised following grounds in AYs. 2007-08 and 2008-09: -

“For AY 2007-08

1. The learned Commissioner of Income Tax (Appeals) erred in confirming Penalty u/s.271(1)(c) on the following amounts:

i) The additional income offered amounting to Rs.15,00,000/- in Return filed in response to Notice u/s.153A without appreciating that the said additional income was accepted and there was no further addition in the assessment order passed u/s.143(3) r.w.s.153A in regard to the said income and therefore the question of imposing Penalty on the above income declared does not arise as held by Honourable Supreme Court in case of Sureshchandra Mittal, 251 ITR 9.

ii) On the addition of Rs.13,78,500/- made u/s.68 without appreciating that the said Cash Deposits made in Bank account were not legally tenable and furthermore the same were satisfactorily explained.

iii) On addition of Rs. 58,846/- on account of Mutual Fund Redemption without appreciating that same were Long term capital gains and therefore exempt from tax.

For AY 2008-09

1. The learned Commissioner of Income Tax (Appeals) erred in confirming Penalty u/s.271(1)(c) on the following amounts:

i) On the addition of Rs. 29,46,615/- made u/s.69 without appreciating that the said addition was made on surmises and without any evidence and furthermore the quantum addition made for Flat No.702 was never acquired by the Assessee.

ii) On addition of Rs. 82,075/- on account of Mutual Fund Redemption without appreciating

*that same were Long term capital gains and
therefore exempt from tax.”*

3. At the outset, the learned Counsel for the assessee filed copies of Tribunal orders in ITA No. 1455 and 1456/Mum/2012 for AY 2007-08 and 2008-09 vide order dated 14-12-2016 and 04-01-2017, wherein while deciding the quantum appeals, quashed the search assessments vide Para 3.3.3 as under: -

“3.3.3 Section 153A of the Act pertains to assessments to be carried out in case of search under section 132 or requisition under section 132A of the Act. Subsection (1) of section 153A provides that notwithstanding anything contained in sections 139, 147, 148, 149, 151 and 143 of the Act, in the case of a person in whose case search is initiated under section 132 of the Act or books of account, other documents or any assets are requisitioned under section 132A of the Act after 31.05.2003, the AO shall issue notice requiring such person to furnish the returns of income for and assess or re-assess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search was conducted or requisition is made. In our considered view, in the light of the factual matrix of the case as discussed from para 3.1 to 3.3.2, we record the finding that there was no warrant of authorisation issued to search the assessee’s premises on 24.02.2009 and Revenue was unable to produce the same, if any, to controvert our finding. This was specifically required in the light of the contradictory statements made by the AO in the order of assessment which led to the confusion of whether the assessee was subjected to search or not. In the absence of any warrant of authorisation to search the assessee’s premises under section 132 of the Act, on 24.02.2009, the AO had no jurisdiction to issue the notices under section 153A of the Act dated 05.10.2009 issued by him; thereby rendering them invalid and consequently the orders of assessment under section 153A of the Act for assessment years 2006-07 and 2007-08 subsequent to the issue of

those notices under section 153A of the Act could not have been passed and the same are also held to be void abinitio and accordingly cancelled. In coming to this finding we draw support from the decisions of the Hon'ble Gujarat High Court in the case of CIT vs. Ramesh D. Patel (2014) 42 taxmann.com 540 (Gujarat), which is on similar facts and is squarely applicable to the case on hand. Ground No. 1 of assessee's appeal for both assessment years 2006-07 and 2007-08 are allowed."

Exactly identical order was passed in AY 2008-09 by the Tribunal.

4. In view of the above, the learned Counsel for the assessee stated that the Tribunal has quashed the search assessments proceedings framed by AO under section 153A of the Act in both the years, once the assessments are quashed, the penalties levied by AO and confirmed by CIT(A) will not survive. Accordingly, these two appeals of assessee are allowed.

5. **In the result, the appeals of assessee are allowed.**

Order pronounced in the open court on 11-04-2017.

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 11-04-2017

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
Assistant Registrar
ITAT, MUMBAI