

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1773/MUM/2020
Assessment Year: 2006-07**

Deputy Commissioner of Income Tax (IT)-4(2)(1), Room No. 1708, 17 th Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	M/s Ganpat Singhvi, AI Nasser Holdings Liwa Tower- Capital Centre, Khaleej Al-Arabi Street, P.O. Box 46611, Abu Dhabi, UAE PAN: BHMPS6673K
(Appellant)		(Respondent)

Revenue by : Shri Prabhat Kumar Gupta (CIT-DR)

Assessee by : Ms. Hema Kataria (AR)

Date of Hearing : 05/10/2021

Date of Pronouncement: 22/10/2021

ORDER

PER SAKTIJIT DEY, JM

This is an appeal by the revenue challenging the order dated 31.01.2020 passed by learned Commissioner of Income Tax (Appeals)-58, Mumbai deleting the penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 for the assessment year 2006-07.

2. Briefly the facts are, the assessee is a non-resident individual. The Assessing Officer (AO) received information from Government of France under bilateral exchange of information that the assessee is having account with HSBC Bank, Geneva. From the base note received, the Assessing AO found that the assessee is holder of two accounts in HSBC Bank having peak balance

of US\$ 11,84,652.72 in one account and US\$ 9537 in another account. Based on such information, the AO reopened the assessment under section 147 of the Act. In response to the notice issued under section 148 of the Act, the assessee appeared and raised objections against the reopening of assessment proceedings. The assessee submitted that being a non-resident for more than 35 years, the provision of Income Tax Act could not be applicable. The Assessing Officer, however, did not find merit in the submissions of the assessee and ultimately completed the assessment under section 143(3) r.w.s. 147 of the Act, vide order dated 25.03.2015 determining the total income at Rs. 5,30,93,131/-. Against the assessment order so passed, assessee preferred appeal before learned Commissioner (Appeals). During the pendency of assessee's appeal before First Appellate Authority, the AO initiated proceedings for imposition of penalty under section 271(1)(c) of the Act and ultimately passed an order on 31.08.2015 imposing penalty of Rs. 5,35,95,264/-, being 300% of tax sought to be evaded. Assessee challenged the imposition of penalty before learned Commissioner (Appeals). While considering assessee's appeal against the imposition of penalty, learned Commissioner (Appeals) found that while deciding assessee's quantum appeal, the First Appellate Authority has deleted the addition based on which penalty under section 271(1)(c) of the Act was imposed. That being the factual position, learned Commissioner (Appeals) deleted the penalty imposed under section 271(1)(c) of the Act. Being aggrieved, revenue is before us.

3. We have heard Shri Prabhat Kumar Gupta, learned Departmental Representative and Ms. Hema Kataria, learned Authorised Representative of

the assessee. It is an agreed factual position before us that while deciding the appeal filed by the Revenue challenging the order of learned Commissioner (Appeals) deleting the substantive addition made by the AO in the assessment order, the Tribunal in ITA No. 706/Mum/2019 dated 01.10.2021 has upheld the decision of learned Commissioner (Appeals). Thus, when the addition based on which penalty proceedings under section 271(1)(c) of the Act was deleted by the appellate authorities, the penalty imposed under section 271(1)(c) of the Act cannot be sustained. Therefore, we do not find any infirmity in the decision of learned Commissioner (Appeals) in deleting the penalty imposed. Grounds raised are dismissed.

4. In the result, appeal is dismissed.

Order pronounced in the open court on 22nd October, 2021.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 22/10/2021

Alindra, PS

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**