

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&**

SHRI AMARJIT SINGH, JUDICIAL MEMBER

**ITA No.1774/Mum/2020
(Assessment Year :2007-08)**

Dy. Commissioner of Income Tax (IT)-4(1)(1) Mumbai Room No.1708, 17 th Floor Air India Building Nariman Point Mumbai – 400 021	Vs.	M/s. Ganpat Singhvi Al Nasser Holdings Liwa Tower- Capital Centre Khaleej Al-Arabi Street P.O.Box-46611, Abu Dhabi, UAE-46611
PAN/GIR No.BHMPS6673K		
(Appellant)	..	(Respondent)

Revenue by	Shri Jayant Jhaveri
Assessee by	Ms. Hema Kataria
Date of Hearing	02/12/2021
Date of Pronouncement	06/12/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.1774/Mum/2020 for A.Y.2007-08 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-58, Mumbai in appeal No.CIT(A)-58, Mumbai/10250/2015-16 dated

31/01/2020 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as Act).

2. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the levy of penalty u/s.271(1)(c) of the Act in the facts and circumstances of the instant case.

3. We have heard rival submissions and perused the materials available on record. We find that in this case, the addition of Rs.1,32,72,864/- was made by the Id. AO on account of alleged investment made by the assessee in HSBC Bank, Geneva. The bank account was held in the name of Blueridge Investment Corporation with HSBC, Geneva. However, the assessee was impleaded and deposit made in the said bank account was sought to be added as income in the hands of the assessee. Similar addition was made by the Id. AO in the hands of the assessee for A.Y.2006-07 also, which was the subject matter of adjudication by this Tribunal in ITA No.706/Mum/2019 dated 01/10/2021. This Tribunal had deleted the addition made in the hands of the assessee and dismissed the appeal of the revenue by confirming the order of the Id. CIT(A). Penalty was also levied for A.Y.2006-07 which was also deleted by this Tribunal in ITA No.1773/Mum/2020 dated 22/10/2021. For the sake of convenience, the penalty order is reproduced hereunder:-

“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."*

3.1. We find that the Id. CIT(A) had placed reliance on the order passed by his predecessor for A.Y.2006-07 and deleted the penalty. Since the penalty for A.Y.2006-07 on the same set of facts has been deleted by this Tribunal by confirming the order of the Id. CIT(A), even for the year under consideration, the concealment penalty u/s.271(1)(c) of the Act

stands deleted. Hence, we do not find any infirmity in the order of the Id. CIT(A). Accordingly, the grounds raised by the Revenue are dismissed.

4. In the result, appeal of the Revenue is dismissed.

Order pronounced on 06/12/2021 by way of proper mentioning in the notice board.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 06/ 12 /2021
KARUNA, *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,

(Asstt. Registrar)
ITAT, Mumbai