

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. Nos. 167 & 168/KOL/2022
Assessment Years: 2006-2007 & 2007-2008**

Deputy Commissioner of Income Tax,.....Appellant
Central Circle-3(3), Kolkata,
Aayakar Bhawan Poorva,
Room No. 416,
110, Shanti Pally, E.M. Bypass,
Kolkata-700107
-Vs.-

Yamini Agarwal,.....Respondent
Block-'O',
609, New Alipore, Alipore,
Kolkata-700053
[PAN:AAACN8505C]

Appearances by:

Smt. Ranu Biswas, Addl. CIT, appeared on behalf of the Revenue
Shri S.K. Tulsian, Advocate, appeared on behalf of the assessee

Date of concluding the hearing : July 12, 2022

Date of pronouncing the order : July 13, 2022

O R D E R

Per Bench:-

The present two appeals are directed at the instance of Revenue against the separate orders of Id. Commissioner of Income Tax (Appeals)-21, Kolkata dated 11th February, 2022 passed in Assessment Years 2006-07 and 2007-08 respectively.

2. The solitary grievance of the Revenue in both the years relates to deletion of penalty by the Id. CIT(Appeals), which was imposed by the Id. Assessing Officer under section 271(1)(c) of the Income Tax Act.

3. Brief facts of the case are that search operations under section 132 of the Income Tax Act were conducted in the case of Murarka Group on 28.07.2011. The assessee was also covered under the search being daughter of Shri Shyama Prasad Murarka. Hence notices under section 153A of the Income Tax Act were issued in both the years. The assessee has filed returns of income for both the years. The Id. Assessing Officer has made additions of Rs.1,22,48,403/- and Rs.2,60,55,167/- on the ground that the above amounts were deposited by the assessee in a Bank Account with HSBC, Geneva, Switzerland. According to the Id. Assessing Officer, this is the undisclosed Bank Account and hence the addition of these amounts deserves to be made as undisclosed income of the assessee. The assessee took the matter in appeal before the ITAT vide IT(SS)A Nos. 97 & 98/KOL/2015. The Tribunal has quashed both the assessment orders and deleted the additions. The finding of the Tribunal in concluding paragraph reads as under:-

"26. In the light of the discussion above, our conclusion is that in the present case, the issue dealt with by the AO in the assessment order u/s.153A of the Act, could not and ought not to have been examined by the AO in the assessment proceedings u/s.153A of the Act as the said issue stood concluded with the assessee's return of income being accepted prior to the date of search and no notice having been issued u/s. 143(2) of the Act within the time limit laid down in that section. Such assessment did not abate on the date of search which took place on 28.3.2008. In respect of assessments completed prior to the date of search that have not abated, the scope of proceedings u/s. 153 A of the Act has to be confined only to material found in the course of search. Since no material whatsoever was found in the course of search, the additions made by the AO in the order of assessment for both the Assessment years could not have been subject matter of proceedings u/s. 153A of the Act. Consequently, the said various additions made in the orders of Assessment ought not to have or could not be made by the AO. Gr. No. 1 raised by the Assessee in both the appeals are accordingly allowed.

27. In view of the above conclusions, the other grounds of appeal raised by the Assessee on merits, do not require any consideration".

4. The Id. Assessing Officer initiated penalty proceedings under section 271(1)(c) for concealment of income and ultimately imposed penalty.

5. On appeal, the Id. CIT(Appeals) deleted the penalty on the ground that assessment orders have been quashed by the ITAT and, therefore, no penalty is imposable upon the assessee.

6. With the assistance of Id. representatives, we have gone through the record carefully. Before embarking upon an inquiry on the facts of the present case, we deem it appropriate to take a note of the relevant provisions, which read as under:-

“Failure to furnish returns, comply with notices, concealment of income, etc.

271. (1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person-

(a) x x x x x x x x x

(b) x x x x x x x x x

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or

(i) x x x x x x x x x

(ii) x x x x x x x x x

(iii) in the cases referred to in clause (c) or clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed (three times), the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits”.

7. A perusal of the above clause would indicate that in the cases where clause (c) of section 271(1) is applicable, then in those cases, an assessee would be called upon to pay in addition to the taxes, if any payable by him, a sum which shall not be less than, but which shall not exceed three times of taxes sought to be evaded by the assessee on account of concealment of particulars of his income or for furnishing inaccurate particulars. In other words, in addition to the tax, if any, payable by an

assessee on the total income determined by the Assessing Officer, the assessee would be required to pay penalty, which may be equivalent to the taxes sought to be evaded by the assessee or it can be upto three times of such taxes. The computation of the penalty is dependent upon the addition made to the total income of the assessee and on those additions apart from taxes, a penalty equivalent to tax or three times of such taxes could be levied. In the present case, the additions are not there because assessments have been quashed, therefore, nothing can be computed under sub-clause (iii) of section 271(1)(c) for recovery from the assessee. In other words, quantum of additions has been deleted. The very foundation to impose a penalty would extinguish and accordingly the Id. 1st Appellate Authority has rightly deleted the penalty in both the years.

8. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open Court on July 13th, 2022.

**Sd/-
(Rajesh Kumar)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President (KZ)**

Kolkata, the 13th day of July, 2022

- Copies to :*
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 - (2) ***Yamini Agarwal,
Block-'O',
609, New Alipore, Alipore, Kolkata-700053***
 - (3) *Commissioner of Income Tax (Appeals)-21, Kolkata*
 - (4) *Commissioner of Income Tax- , Kolkata,*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

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By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.