

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA Nos.438, 440 & 441/M/2022
Assessment Years: 1997-98, 2006-07 & 2007-08**

Dy. Commissioner of Income Tax, Central Circle-2(1), Old CGO Building, 804, 8 th Floor, M.K. Road, Mumbai - 400020	Vs.	Shri Kumar Rasiklal Mehta, 602-603, Prasad Chambers, Opera House, Maharashtra – 400 004 PAN: AAOPM3805D
(Appellant)		(Respondent)

**CO Nos.88, 90 & 86/M/2022
(Arising out of ITA Nos.438/M/2022)
Assessment Years: 1997-98, 2006-07 & 2007-08**

Shri Kumar Rasiklal Mehta, 602-603, Prasad Chambers, Opera House, Maharashtra – 400 004 PAN: AAOPM3805D	Vs.	Dy. Commissioner of Income Tax, Central Circle-2(1), Old CGO Building, 804, 8 th Floor, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Harsh Kapadia, A.R.
Revenue by : Shri Tejinder Pal Singh, D.R.

Date of Hearing : 14 . 07 . 2022
Date of Pronouncement : 29 . 07 . 2022

ORDER

Per Bench:

For the sake of brevity aforesaid cross appeals and cross objections bearing common question of law and facts are being disposed of by way of composite order.

2. Appellant Dy. Commissioner of Income Tax, Mumbai (hereinafter referred to as the Revenue) and the cross objector Shri Kumar Rasiklal Mehta (hereinafter referred to as the assessee) by filing the present appeals and cross objections sought to set aside the impugned order dated 20.12.2021 passed by the Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as the Ld. CIT(A)] on the identical grounds except difference in amount of addition inter alia that:

Revenue's grounds of appeal

“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A)-48, Mumbai had erred in deleting the penalty of Rs.17,83,900/-, Rs.22,86,800/- & Rs.10,89,000/- for A.Y. 1997-98, 2006-07 & 2007-08 respectively ignoring the fact that initially the assessee had denied the fact of having foreign bank account.

Cross Objections of assessee:

“On the facts and circumstances of the case, and in law, the learned CIT(A) erred in confirming the validity of the impugned penalty order without appreciating the fact that the penalty notice issued under section 274 read with 271(l)(c) of the Income-tax Act, 1961 ('the Act') by the learned Assessing Officer was bad in law.”

3. Briefly stated facts necessary for adjudication of the controversy at hand are : on the basis of assessment framed under

section 143(3) read with section 147 of the Income Tax Act, 1961 (for short 'the Act') making identical additions under section 69A of the Act being the undisclosed income, penalty proceedings have been initiated by way of issuance of notice under section 274 read with section 271(1)(c) of the Act. Assessment in this case was framed on the basis information received from Government of India and from the French Government under DTAA in exercise of its sovereign powers that some Indian nationals and residents have foreign bank accounts in HSBC Bank Geneva, Switzerland which were undisclosed to the Indian Taxation Department. After appreciating the facts and declining the contentions raised by the assessee AO made addition under section 69A of the Act and thereby framed the assessment under section 143(3) read with section 147 of the Act. Further declining the contentions raised by the assessee on levying the penalty under section 271(1)(c) of the Act AO proceeded to levy the penalty of Rs.10,89,000/-, Rs.22,86,800/- & Rs.17,83,900/- @ 100% of the tax sought to be evaded for A.Y. 1997- 98, 2006-07 and 2007-08 respectively.

4. Assessee carried the matter before the Ld. CIT(A) who has deleted the penalty by partly accepting the appeals filed by the assessee. Feeling aggrieved Revenue as well as assessee have come up before the Tribunal by way of filing appeals as well as cross objections.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light

of the facts and circumstances of the case and law applicable thereto.

6. At the very outset, it is brought to our notice that Ld. CIT(A) has deleted the penalties levied by the AO on the premise that since the addition made by the AO have no longer sustained having been deleted in the quantum appeal as well as assessee in the revised return has paid tax qua certain additions. This proposition of fact has not been controverted by Ld. D.R. for the Revenue.

7. We have perused the order passed by the Ld. CIT(A) who has deleted the additions by returning following findings:

“7. It is worth mentioning here that, the assessee has included income of Rs. 53,00,000/-, by filing revised return of income on 12.04.2012 so as to arrive at the total income of Rs. 1,00,60,4107-. In the assessment order passed u/s 143(3) rws 147 of the IT. Act dated 19.03.2014, the income so offered in the revised Rol is not disturbed. No where in the assessment order, any addition of any undisclosed income has been made by the AO. As such the revised return of income has been accepted by the AO. It is further observed that tax of Rs. 39.94.250/-, on additional income offered, was paid on 31.10.2011 while the notice u/s 148 was issued on 30.03.2012. In the above set of facts, the Appellant has stated that there is no concealment of income.

On careful consideration, the following facts emerge:

(i) no addition has been made by the AO while passing the order u/s 143 r.w.s. 147 of the Act, which is the basic requirement to levy penalty,

(ii) tax of Rs. 39,94,250/-, on additional income offered, was paid on 31.10.2011 i.e., prior to the notice u/s 148 issued on 30.03.2012

(iii) additional income of Rs. 53,00,000/- was offered and included, by filling revised return of income on 12.04.2012

7.1 Looking to the above facts and circumstances, in my considered opinion, there is no reason for imposition of penalty u/s 271(l)(c) of the Act. Hence, the penalty of Rs.17,83,900/- is deleted. Thus, grounds related to levy of penalty for A.Y. 2007-08 are allowed.

8. Since substantive ground related to levy of penalty is allowed in favour of the Appellant, other supportive grounds become academic in nature.

9. Accordingly, the appeal of the appellant for AY 2007-08 is partly allowed (additional ground being rejected).

II. CIT A Mumbai-30 13321 2015-16: A.Y. 2006-07

10. The appellant has made identical Grounds as that made in the preceding year AY 2007-08 as reproduced above. For A.Y. 2006-07, the issue was on similar lines. The appellant has also raised identical additional ground of appeal.

10.1 It has been held by the undersigned, while deciding the quantum appeal for the impugned year, that the addition made in A.Y. 2006-07 was based on same piece of paper for which addition is made in A.Y. 2007-08. The addition made in A.Y. 2006-07 relates to the peak balance amount of US \$1,13,776 (Rs. 51,19,959/-) being part of peak balance offered by the appellant in A.Y. 2007-08 of US \$ 1,17,372 (Rs. 53,00,000/-). In this respect the assessee has filed copy of document in which the peak balance appeared as on in the month of February, 2007 is US \$ 1,17,372.

10.2 In my considered opinion, it would be unfair to hold the appellant liable for the same amount of US \$1,13,776 as made in A.Y. 2007-08. This has resulted in double taxation. In view of this, the addition made by the A.O. of Rs.51,19,959/u/s. 69A of the Act, has been directed to be deleted.

11. Once the addition made with respect of Rs. 51,19,959/u/s. 69A 'of the Act, has been deleted as discussed in the foregoing paras, the penalty levied needs to be deleted too. Considering the facts of the case, penalty levied of amounting to Rs. 22,86,800/is directed to be deleted.

The additional ground of appeal is rejected based on the same rational as mentioned in the preceding paragraphs.

13. Accordingly, the appeal of the appellant for AY 2006-07 is partly allowed (additional ground being rejected).

III. CIT(A) Mumbai-30/3319/2015-16: A.Y. 1997-98

14. For A.Y. 1997-98 also, the appellant has made identical Grounds as that made in the preceding year AY 2007-08 as reproduced above. The issue involved is on similar lines. The appellant has also raised identical additional ground of appeal.

15. For the year under consideration i.e., A.Y. 1997-98, the addition has been made of Rs. 27,50,000/- with respect to initial deposit. According to the A.O., there should have been some minimum specific amount required to open/maintain said account. During the assessment proceedings, on this issue the assessee made a submission dated 25.02.2015 wherein the assessee has stated that highest maximum total balance of US\$ 1,17,372 (Rs. 53,00,000/-) is inclusive of the initial deposit; hence, been included in the peak balance offered for taxation in A.Y. 2007-08. Thus, there is no scope of any further addition on this count. However, the AO not being satisfied with the contention of the appellant, added back amount of Rs. 27,50,000/being undisclosed income u/s. 69A of the Act, to the total income of the assessee.

16. It has been held by the undersigned, while deciding the quantum appeal for the impugned year, that since no documentary evidence has been brought on record by the A.O. that some minimum specific amount was required to open/maintain said account, (which is not included in the

peak balance of US\$ 1,17,372 (Rs. 53,00,000/-)), the addition of Rs.27,50,000/- u/s. 69A of the Act, is untenable and deserved to be deleted.

17. Once the addition made with respect of Rs.51,19,959/- u/s. 69A of the Act, has been deleted as discussed in the foregoing paras, the penalty levied needs to be deleted too. Considering the facts of the case, penalty levied of amounting to Rs.22,86,800/- is directed to be deleted.”

8. Bare perusal of the impugned order passed by the Ld. CIT(A) goes to prove that in A.Y. 2007-08 Ld. CIT(A) deleted the addition on the grounds inter alia that during the year under consideration no addition has been made by the AO under section 143 read with section 147 of the Act; that tax of Rs.39,94,250/- on additional income offered was paid on 31.01.2011 i.e. prior to the issuance of notice under section 148 of the Act and; that assessee has offered additional income of Rs.53,00,000/- by filing revised return of income. In A.Y 2006-07 Ld. CIT(A) deleted the addition of Rs.51,19,959/- made under section 69A of the Act on merits, hence no penalty is leviable. Similarly, in A.Y. 1997-98 the Ld. CIT(A) deleted the penalty levied by the AO on the ground that quantum addition in this case is deleted.

9. So we are of the considered view that when quantum addition made in the aforesaid cases is not in existence having been deleted and in remaining additions assessee has paid tax prior to filing of revised return, no case is made out for levying the penalty under section 271(1)(c) of the Act. So finding no illegality or perversity in the impugned findings aforesaid appeals filed by the Revenue are dismissed.

10. Since the appeals filed by the Revenue have been dismissed on merits cross objections filed by the assessee raising technical ground are also dismissed having been become infructuous.

11. In the result, all the appeals filed by the Revenue as well as cross objections filed by the assessee are dismissed.

Order pronounced in the open court on 29.07.2022.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 29.07.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.