

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI PRASHANT MAHARISHI, AM**

आयकरअपीलसं./ I.T.A. No. 968/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2014-15)

Mrs. Chhaya Himmat Jagda 602-Manas Moti Building No. 1 (6 th floor), Devidas Lane, Near Lawrence School, Borivali (west), Mumbai-400 092	बनाम/ Vs.	ITO ward 32(1)(2) C-11, Pratyakshkar Bhavan, Bandra Kurla Complex, Bandra(east), Mumbai-400 051
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAEPJ7836R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri M. Subramanian, Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Praveen Shekhar, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	04.08.2022
घोषणाकीतारीख / Date of Pronouncement	:	24.08.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the assessee against the impugned order dated 21.04.2022, passed by National Faceless

Appeal Centre (NFAC), Delhi in relation to penalty proceedings u/s 271(1)(c) for AY 2014-15.

2. Assessee is aggrieved by levy of penalty of Rs. 4,90,000/- on account of sale consideration of Rs. 17,17,275/- treating it as business income instead of capital gain.

3. The facts in brief are that assessee has claimed long term capital gain on some share transactions of Rs. 16,22,890/- on sale of shares of M/s Sunrise Asia Ltd. The said long term capital gain was treated as exempt u/s 10(38). Ld. AO after detail discussion has held it to be bogus long term capital gain on the basis of certain information received from Kolkata investigation directorate. The penalty has been levied by the AO holding it to be concealment of income as well as furnishing inaccurate particulars of income.

4. Ld. CIT(A) has too confirmed the penalty.

5. Before us, Ld. Counsel for the assessee submitted that here in this case AO while issuing notice u/s 274 r.w.s. 271 has not specified the charge under which limb, he intended to impose penalty. In support of it, he filed copy of notice dated 15.12.16 and submitted that penalty levied by AO is not sustainable in law.

6. On the other hand, Ld. DR strongly relied on the order of Ld. CIT(A).

7. After considering the aforesaid submissions and perused the material placed on record, we find that AO though in his assessment order made addition of Rs. 17,17,275/- and stated that penalty proceedings is initiated separately for furnishing inaccurate particulars of income. However, while issuing notice u/s 274 r.w.s. 271, he has not specified the charge under which limb, he intends to impose the penalty. Even in the penalty order, he has mentioned both the charges which are not in accordance with law.

8. The full Bench of Hon'ble Bombay High Court in **Mohd. Farhan A. Shaikh Vs. Dy.CIT (2021) 125 taxmann.com 253 (Bom)** has considered this very issue. Answering the question in affirmative, the Full Bench held that a defect in notice of not striking the relevant words vitiates the penalty even though the AO had properly recorded the satisfaction for imposition of penalty in the order u/s 143(3) of the Act. In another judgment, the Hon'ble Bombay High Court in **Pr.CIT Vs. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 124 taxmann.com 248 (Bom)** also took similar view that

where inapplicable portions were not struck off in the penalty notice, the penalty was vitiated. The SLP of the Department against this judgment has recently been dismissed by the Hon'ble Supreme Court in **Pr.CIT Vs. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 124 taxrnann.com 249 (SC)**. In view of the overwhelming position, it is clear that where the charge is not properly set out in the notice u/s 274 viz., both the limbs stand therein without striking off of the inapplicable limb, but the penalty has been, in fact, levied for one of the two, such a penalty order gets vitiated.

9. Thus, the aforesaid propositions are squarely applicable to this case. Accordingly, the penalty levied by AO is bad in law and the same is quashed.

10. In the net result, the appeal filed by the assessee stands **allowed**.

Orders pronounced in the open court on 24th August, 2022.

Sd/-

(Prashant Maharishi)

Accountant Member

मुंबई Mumbai;दिनांक Dated : 24/08/2022

Sr.PS. Dhananjay

Sd/-

(Amit Shukla)

Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./ Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai