

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

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI M BALAGANESH, AM**

आयकरअपीलसं./ I.T.A. No. 1224 & 1226/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2006-07 & 2007-08)

DCIT Cen. Cir-1(2), R. No. 906, 9 th floor, Annex Building, Pratistha Bhavan, Churchgate, Mumbai-400 020	बनाम/ Vs.	Raj Hiten Parikh 42C, Laxmi Nivas, 87, Nepean Sea Road, Mumbai-400 006
स्थायीलेखासं ./जीआइआरसं ./PAN No. AGFPP6664E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थीकीओरसे/ Appellant by	:	Shri T. Shankar, Ld. DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Anuj, Ld. AR
सुनवाईकीतारीख/ Date of Hearing	:	22.08.2022
घोषणाकीतारीख / Date of Pronouncement	:	22.08.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeals have been filed by the revenue against the separate impugned order of even date 15.11.2021, passed by Ld. CIT(A)-47, Mumbai in relation to penalty proceedings u/s 271(1)(c) of the Act for AY 2006-07 and 2007-08 respectively. In both the years, revenue is aggrieved by deletion of penalty of Rs.

9,42,29,730/- for AY 2006-07 and Rs. 2,16,27,860/- for AY 2007-08.

2. Facts in brief as culled out from the appellate order, which is common to both the years, are as under :

2.1. The appellant Mr. Raj Hiten Parekh is a director in Mahendra Brothers Exports Pvt. Ltd, a company engaged in processing and export of diamonds. In this case, specific information (hereinafter called as Base Note) was received from the French Government, under DTAA (Double Taxation Avoidance Agreement) that the present assessee was a beneficial owner of undisclosed overseas bank accounts in the names of the companies Sulay Trading Ltd and Laptis Trading Ltd with HSBC Bank, Geneva. Therefore a search and seizure action u/s.132(1) of the Act was conducted in the case of Mahendra Brothers Exports Pvt. Ltd. and other group concerns and directors including the appellant on 08.08.2011 by the DDIT (Inv.), Unit IX(3), Mumbai after receipt of information of undisclosed overseas HSBC accounts. The assessee being director in Mahindra Brothers Exports Ltd, a company engaged in processing & polishing of rough diamonds and its export. At the

time of search, the assessee was shown "Base Note" as received from the French Authorities containing information about HSBC, Geneva, accounts and assessee being beneficial owner of such accounts. However, the assessee denied being beneficial owner of such accounts. A few days later the assessee produced a letter from HSBC Geneva, wherein it was stated that the assessee had no bank accounts in HSBC Geneva and that he had no transactions with the bank. Thereafter the Addl. DIT(inv.) Mumbai wrote a letter to HSBC, Geneva to verify whether they had indeed issued communication, presented by the assessee and also seeking information about the assessee being beneficial owner in respect of accounts in name of Laptis Trading Ltd., Sulay Trading Ltd etc.. But the HSBC refused to divulge any information about Sulay Trading and Laptis Trading Ltd and the assessee being beneficial owner of such accounts citing Swiss secrecy laws but confirmed that they had issued a communication as submitted by the assessee.

3. During the course of assessment proceedings under Section 153A of the Act, assessee was examined on oath by the Assessing Officer under Section 131 of the Act wherein he had denied any

such foreign bank account and also refused to sign consent waiver form. The Assessing Officer, accordingly, made addition of Rs. 27,99,45,729/- in Assessment Year 2006-07 and Rs. 6,42,53,894/- in Assessment Year 2007-08 on account of peak credit in HSBC Bank. Accordingly, penalty has been levied under Section 271(1)(c) of the Act for both the assessment years by the Assessing Officer. The Ld. CIT(A) noted that the ITAT Mumbai vide order dated 07.04.2021 in ITA No. 1957 and 1958/Mum/2020 has allowed the appeals of the assessee, which order has been incorporated in the impugned appeal order from pages 6 to 18. Accordingly, he held that once the quantum itself has been deleted, then penalty levied under Section 271(1)(c) of the Act is unsustainable and does not survive.

4. In view of the aforesaid fact that when the Tribunal itself has deleted the entire addition made by the Assessing Officer on which the penalty has been levied under Section 271(1)(c) of the Act, then the penalty does not survive and has no legs to stand. Thus, same has rightly been cancelled by the Ld. CIT(A). Accordingly, we confirm the order of Ld. CIT(A)

5. In the net result, both the appeals filed by the revenue are **dismissed.**

Orders pronounced in the open court on 22nd August, 2022.

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Amit Shukla)
Judicial Member

मुंबई Mumbai;दिनांक Dated : 22/08/2022
Sr.PS. Dhananjay

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