

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
ITA No. 2252/Mum/2022
(A.Y.2005-06)**

Raju Tirathdas Ramchandani, 603, Premodyan Co-op Housing Society, 12 th Road, Ram Krishna Mission, Khar (W) Mumbai - 400 052	Vs.	Income Tax Officer - 22(3)(1), Piramal Chamber, Lal Baugh Parel, Maharashtra - 400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AEBPR3611P		
Appellant	..	Respondent

Appellant by :	Shashi Bekal
Respondent by :	Mahita Nair

Date of Hearing	31.10.2022
Date of Pronouncement	31.10.2022

आदेश / O R D E R

PER AMARJIT SINGH, AM:

The solitary ground of appeal of the assessee is directed against the NFAC in confirming the levy of penalty of Rs.4,49,922/- u/s 271(1)(c) of the Act.

2. Fact in brief is that assessment u/s 144 r.w.s 147 of the Act was finalized on 04.03.2013. During the course assessment A.O noticed that assessee has made total investment of Rs.14,00,000/- during the year in all Templaton India Treasury Management Account Regular Plan – Weekly dividend plan scheme. The A.O stated that during the course of

assessment no explanation about the nature and the source of the investment made was provided by the assessee, therefore, the A.O treated the amount of Rs.14,00,000/- as unexplained investment and added back to the total income of the assessee. The A.O has also initiated penalty u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income. Thereafter, vide penalty order u/s 271(1)(c) of the Act dated 11.03.2016 the A.O stated that neither assessee attended during the course of penalty proceedings nor filed any explanation for the aforesaid unexplained investment, therefore, penalty to the amount of Rs. 4,49,922/- was levied.

3. Assessee filed appeal before the ld. CIT(A). Even before the ld. CIT(A) assessee had not made any compliance, therefore, ld.CIT(A) has confirmed the penalty levied by the A.O. However, the ITAT, Mumbai, vide order dated 29.06.2016 in respect of the quantum addition of Rs.14,00,000/- set aside the order of ld. CIT(A) and remanded the matter back to the file of the A.O. The assessing officer while giving effect to the order of the ITAT vide order dated 14.08.2017 passed the order u/s 143(3) r.w.s 254 of the Act without making any addition to the returned income.

4. During the course of appellate proceedings before us at the outset the ld. Counsel contended that the order against which penalty levied had already been set aside by the ITAT and no further addition was made by the A.O. Therefore, the impugned penalty is required to be deleted. The ld. Counsel also contended that notice issued u/s 274 dated 04.03.2013 in the case of the assessee for levying penalty u/s 271(1)(c) of the Act is also defective because the A.O has not struck out the irrelevant portion.

On the other hand, the ld. D.R. relied on the order of lower authorities.

5. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above the quantum addition on the basis of which penalty was set aside to the file of the A.O vide ITAT order dated 29.06.2016. Thereafter the A.O vide order dated 11.08.2017 u/s 143(3) r.w.s 254 of the Act has accepted the returned income without making any addition. In view of the above facts we consider that once the quantum addition on the basis of which penalty levied is deleted then the penalty become infructuous. We have also perused the notice u/s 274 dated 04.03.2013 issued by the A.O and noticed that A.O has not struck out the irrelevant portion and did not specify the limb under which the penalty is initiated, therefore, following the decision of Hon'ble jurisdictional High Court Mohd. Farhan A. Shaikh Vs. DCIT (2021) 434 ITR 1 (Bom) (HC), we consider that the impugned penalty is not sustainable. Therefore, the grounds of appeal of the assessee are allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 31.10.2022

Sd/-
(Vikas Awasthy)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 31.10.2022

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.