

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

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA Nos. 260 & 258/Mum/2023
(Assessment Years: 2005-06 & 2006-07)

Darshana Ashokkumar Sheth Flat No. 6, B- Wing, Kothari Society, 21, Bhagat Singh Road, Vile Parle (W), Mumbai-400 056	Vs.	ITO-41(1)(1) Mumbai
PAN/GIR No. BFBPS 8524 N		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Vijay Mehta & Shri Rahul Jain
Revenue by	:	Ms. Mahita Nair
Date of Hearing	:	29.03.2023
Date of Pronouncement	:	27.06.2023

ORDER

Per Kavitha Rajagopal, J M:

These appeals have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Years ('A.Y.' for short) 2005-06 & 2006-07.

2. The solitary issue involved in these appeal is the levy of penalty u/s. 271(1)(c) of the Act. As both these appeals are on identical facts, we hereby pass a consolidated order by taking ITA No. 260/Mum/2023 as a lead case for the sake of convenience.

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3. The brief facts of the case are that the assessee is a resident and has not filed her return of income u/s. 139(1) of the Act as being a housewife without any income on her

own. The assessee was issued notice u/s. 148 dated 08.08.2014 for the reason that the assessee had a foreign bank account with HSBC Bank Geneva and she has not disclosed the deposits and interest and other transactions in the said bank account. The assessee filed her return of income dated 18.09.2014 in response to the said notice, declaring total income at Rs.Nil under the status of 'Resident'. The assessee has contended that the HSBC account was held by her husband Shri Ashok M. Sheth and she was merely a joint account holder without any actual transaction being done by her. It is also observed that the assessee has shown interest income of Rs.127/- in the return of income filed by her and the Assessing Officer (A.O. for short) passed the assessment order dated 23.03.2015 u/s. 143(3) r.w.s. 147 of the Act by making various additions pertaining to the interest income accrued in various banks and determined the total income at Rs.2,80,332/- where the income amounting to Rs.34,852/- being the interest income in Credit Agricole Bank Indosuez (Sussie) SA Geneva and Rs.2,45,353/- being interest income in HSBC Bank Geneva. The A.O. also initiated penalty proceedings and vide order dated 27.08.2015, the A.O. levied penalty amounting to Rs.1,77,795/- being 300% of the amount of tax sought to be evaded u/s. 271(1)(c) of the Act.

4. The assessee was in appeal before the Id. CIT(A) who vide an *ex parte* order dated 01.12.2022, confirmed the penalty levied by the A.O.

5. The assessee is in appeal before us, challenging the impugned order.

6. The learned Authorised Representative (Id. AR for short) for the assessee contended that the interest accrued in foreign bank account was assessed as tax free

income in the hands of the assessee's NRI husband who was a non-resident during the year under consideration and, hence, the A.O. added the said amount in the hands of the assessee being a resident and a joint holder in HSBC Bank as equal beneficiary. The Id. AR stated that the A.O. initiated penalty proceeding u/s. 271(1)(c) of the Act for concealment of income and furnishing of inaccurate particulars of income, pertaining to the addition made on the interest income from foreign banks. The Id. AR further contended that the A.O. then levied penalty u/s. 271(1)(c) of the Act for filing inaccurate particulars of income. The Id. AR stated that the A.O. has failed to mention the specific limb as to for what the penalty proceeding was initiated. The Id. AR also brought our attention to the notice issued by the A.O. u/s. 274 r.w.s. 271 of the Act where the A.O. has failed to strike out the irrelevant limb and has rather made only a tick-mark on the impugned notice. The Id. AR relied on the decision of the Hon'ble Karnataka High Court in the case of *P M Abdulla vs. ITO* [2021] 323 CTR (Kar) 1077.

7. The learned Departmental Representative (Id. DR for short) for the Revenue, on the other hand, controverted the said fact and stated that the A.O. has rightly levied penalty for the reason that the assessee has failed to declare the interest income accrued in the joint account holder, where the assessee was also one of the beneficiary. The Id. DR relied on the orders of the lower authorities.

8. We have heard the rival submissions and perused the materials available on record. It is evident from the records that the addition made on account of interest income in foreign banks were fully declared by the assessee's husband who was a non resident

during A.Y. 2005-06 and then was a resident during A.Y. 2006-07. The A.O. has made addition in the hands of the assessee for the whole income accrued in the joint account held by the assessee and her husband. The penalty proceeding was initiated by the A.O. for concealment of income and furnishing of inaccurate particulars of income and the A.O. proceeded to levy penalty for filing inaccurate particulars of income. It is also evident from the impugned notice dated 23.03.2015 issued u/s. 274 r.w.s. 271 of the Act where the A.O. has failed to strike off the irrelevant limb, i.e., concealment of particulars of income or furnishing inaccurate particulars of income and have rather made a tick-mark in the said notice. The issue of non striking of the irrelevant limb has been decided in favour of the assessee in various decisions including the Hon'ble Bombay High Court (Full Bench at Goa) in the case of *Mr. Mohd. Farhan A. Shaikh v. ACIT* (in Tax Appeal No. 51 and 57 of 2012 dated 11.03.2021), wherein it has been held that non striking of the irrelevant limb tantamount to invalid penalty order in the eyes of law. The Id. AR has also relied on the decision of the Hon'ble Karnataka High Court in the case of *P M Abdulla* (supra), where on similar facts, the Hon'ble High Court has held that the defects apparent in the notice, i.e., to say instead of striking of the irrelevant limb the A.O. has merely made a tick-mark, vitiates the penalty proceedings. Even in case of the assessee, a similar defect has been brought to our notice by the Id. AR which is suffice to held the penalty proceedings to be invalid and not sustainable. The intention of the legislature is to remove vagueness in the proceeding and to adhere to the principles of natural justice where the parties are informed of on what grounds the penalty is initiated. The

irregularity in the mandatory requirements is not a curable defect and rather goes to vitiate the proceeding in toto.

9. By respectfully following the above said decision, we hereby delete the penalty levied by the A.O. and confirmed by the Id. CIT(A).

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10. As the facts of this appeal are identical with that of the facts in ITA No. 260/Mum/2023 and also the fact that the addition in this year has been made in the hands of the assessee on protective basis, the penalty levied has to be deleted on this as well as on the observation made above.

11. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 27.06.2023

Sd/-

Sd/-

(Prashant Maharishi)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 27.06.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai