

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"D" BENCH, MUMBAI**

**BEFORE SHRI G.S. PANNU, PRESIDENT, AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.1382/Mum./2023**

**(Assessment Year : 1997-98)**

Dy. Commissioner of Income Tax  
Central Circle-1(2), Mumbai

..... Appellant

v/s

Shri Milan Kavinchandra Parikh  
15A, J. Metha Road, Next to Khatau  
Condominium, Mumbai 400 006  
PAN - AADPP0814G

.....Respondent

Assessee by : Shri Anuj Kisnadwala

Revenue by : Smt. Mahita Nair

Date of Hearing - 12/07/2023

Date of Order - 27/07/2023

**ORDER**

The present appeal has been filed by the Revenue challenging the impugned order dated 17/02/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)-47, Mumbai, [*learned CIT(A)*], which in turn arose from the penalty order dated 30/09/2015 passed under section 271(1)(c) of the Act, for the assessment year 1997-98.

2. In this appeal, the Revenue has raised the following grounds:-

*"1. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) has erred in deleting the penalty levied by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961, without considering that specific information in form of 'Base Note' was received from a foreign government*

*regarding beneficial ownership of undisclosed foreign bank account by the assessee.*

*2. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) has erred in deleting the penalty levied by the Assessing Officer w/s 271(1)(c) of the Income Tax Act, 1961, without considering that during the penalty proceedings the assessee had failed to give the proper explanation and to disclose facts which were in his exclusive knowledge before the Assessing Officer and had thus not discharged the onus cast on him.*

*3. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) has erred in deleting the penalty levied by the Assessing Officer w/s 271(1)(c) of the Income Tax Act, 1961, without considering that the department has not accepted the decision of the CIT(A) to delete the quantum addition made towards undisclosed HSBC bank accounts held by the assessee and an appeal before the Hon'ble ITAT for AY 1997-98 has been preferred."*

3. The only dispute raised by the Revenue is against the deletion of penalty levied under section 271(1)(c) of the Act.

4. The brief facts of the case as emanating from the record are: Information under Article 28 of the India-France Double Taxation Avoidance Agreement was received regarding the four undisclosed foreign bank accounts held with HSBC Bank, Geneva, Switzerland. As per the information, these bank accounts were in the name of four companies where four individuals, who are resident Indians and are cousin brothers belonging to the Mahindra Brothers group, are beneficial owners as per the Base Note received. By way of Base Note, information such as name, date of birth, place of birth, sex, residential address, profession, and nationality along with the date of opening of the bank account in HSBC Bank, Geneva, and balance in certain years was provided. In order to investigate these facts, a search and seizure action under section 132 of the Act was conducted on 08/08/2011 on Mahendra Brothers Export Private Limited, its directors including the assessee. Pursuant to the search action, the bank statement of these four individuals, including the assessee, with HSBC

Bank, Geneva, came into possession of the Investigation Wing, which showed that these four individuals are beneficiaries of the four bank accounts held by the four companies in HSBC Bank, Geneva.

5. On the basis of the above information, reassessment proceedings under section 147 of the Act were initiated, inter-alia, in the case of the assessee, and notice under section 148 of the Act was issued. In response to the aforesaid notice, the assessee filed a letter that the return filed under section 139(1) of the Act be treated as a return filed in compliance with the notice issued under section 148 of the Act. The reasons recorded for reopening the assessment were provided to the assessee. During the course of search action as well as during the course of reassessment proceedings, the assessee denied owning any such bank account in HSBC Bank, Geneva. The assessee also did not furnish the consent waiver form waiving the protection of secrecy laws, so as to enable the government to get the requisite information and verify the details/letter furnished by the assessee. The Assessing Officer ("AO") vide order dated 27/03/2015 passed under section 143(3) r/w section 147 of the Act held that the assessee, inter-alia, is the beneficial owner of the foreign bank account maintained with HSBC Bank, Geneva, Switzerland. The AO further held that the date of creation of the bank account was 02/02/1997, and the minimum balance required to open an account in HSBC Bank, Geneva was CHF (Swiss Franc) 100,000, in order to get the benefit of secrecy services provided by the bank. As the assessee has failed to disclose this amount in his return of income, therefore, an amount of CHF 100,000, which in terms of Indian currency comes to Rs.24,24,000 (as per the exchange rate prevailing

on 03/02/1997) was added to the total income of the assessee as unexplained money under section 69A of the Act.

6. In an appeal before the learned CIT(A), the assessee challenged the assessment order both on the assumption of jurisdiction under section 147 of the Act as well as additions made by the AO. The learned CIT(A) vide order dated 15/09/2022 upheld the assumption of jurisdiction by the AO under section 147 of the Act and held that the AO had valid reasons to initiate the reassessment proceedings, which were duly recorded and communicated to the assessee. On merits, the learned CIT(A) following the decision of the coordinate bench of the Tribunal in assessee's own case for the assessment years 2006-07 and 2007-08 deleted the addition made by the AO.

7. Meanwhile, vide penalty order dated 30/09/2015 passed under section 271(1)(c) of the Act, the AO levied a penalty of Rs. 12,62,000. The learned CIT(A), vide impugned order, deleted the penalty of Rs. 12,62,000 levied under section 271(1)(c) of the Act since in quantum appeal the learned CIT(A) deleted the entire addition of Rs. 25,24,000 made vide order passed under section 143(3) r/w section 147 of the Act. Being aggrieved, the Revenue is in appeal before us.

8. Having considered the submissions of both sides and perused the material available on record, we find that in further appeal by the Revenue against the order dated 15/09/2023 passed by the learned CIT(A) in quantum appeal, the coordinate bench of the Tribunal vide order dated 21/03/2023 passed in DCIT v/s Shri Milan Kavinchandra Parikh, in ITA No. 2933/Mum./2022, allowed the petition filed by the assessee under Rule 27 of

ITAT Rules and held that the AO had no jurisdiction to make the addition under section 147 of the Act. Accordingly, the appeal filed by the Revenue in quantum proceedings was rendered academic and therefore, was dismissed. Since the addition made by the AO while completing the assessment under section 147 of the Act was held to be beyond the jurisdiction by the coordinate bench of the Tribunal vide aforesaid order, we find no basis in the penalty levied under section 271(1)(c) of the Act based on the very same addition. Therefore, as the very basis of levying the penalty is found to be beyond the jurisdiction under the Act, the penalty levied in the present case under section 271(1)(c) of the Act is not sustainable. Accordingly, the impugned order passed by the learned CIT(A) deleting the penalty is upheld. As a result, grounds raised by the Revenue are dismissed.

9. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 27/07/2023

**Sd/-**  
**G.S. PANNU**  
**PRESIDENT**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 27/07/2023**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai