

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER  
&  
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

**I.T.A. No. 674/Kol/2023**  
**Assessment Year: 2014-15**

<b>Chandravadan Desai</b> SB Tower, 3 <sup>rd</sup> Floor 37, Shakespeare Sarani Circus Avenue S.O. Kolkata - 700017 <b>[PAN : AABDH5812Q]</b>	Vs	<b>Income Tax Officer, Ward-7(2), Kolkata</b>
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Akkal Dudhewala, A.R.
Revenue by :	Shri Abhijit Kundu, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 06/02/2024  
घोषणा की तारीख /Date of Pronouncement: 17/04/2024

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

This appeal at the instance of the assessee is directed against the order of the National Faceless Appeal Centre, Delhi (in short '1d. First Appellate Authority') dt. 09/05/2023 which is arising out of the assessment order u/s 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act'), dt. 30/12/2016 relevant to Assessment Year 2014-15 framed by ACIT, Circle-32, Kolkata.

2. The assessee has raised the following grounds of appeal:-

"1. For that on the facts and in the circumstances of the case, the lower authorities inspite of being aware that Chandravadan Desai HUF had been partitioned and had ceased to exist upon its partition on the 26th day of March 2014, and the impugned penalty order passed by the AO in the name of Chandravadan Desai HUF, a non-existent person was invalid, and therefore the order deserves to be cancelled.

2. *For that on the facts and in the circumstances of the case and without prejudice to the above, the Ld. CIT(A), NFAC erred in not quashing the impugned penalty order for the reason that the AO was unjustified in levying penalty for alleged concealment of particulars, whereas penalty had been initiated for furnishing inaccurate particulars of income.*
3. *For that on the facts and in the circumstances of the case and without prejudice to the above, the impugned order ought to be declared ab initio void for being barred by limitation.*
4. *For that on the facts and in the circumstances of the case and without prejudice to the above and even on merits, there was no concealment of particulars by the appellant and in that view of the matter the penalty of Rs.2,47,33,142/-levied by the AO deserves to be deleted.*
5. *For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before."*

3. Brief facts of the case are that the assessee is a Hindu Undivided Family (HUF) and it filed its return of income on 28/07/2014 declaring Nil income. Case selected for scrutiny under CASS followed by issuance and service of notice u/s 143(2) & 142(1) of the Act. Various details as called for were filed along with producing documents and books of accounts. The Id. Assessing Officer observed that the assessee HUF has undergone partition and deed of dissolution made on 26<sup>th</sup> day of March, 2014, where the party by way of mutual agreement amongst themselves agreed to separate. Thus, the Id. Assessing Officer was having the information that assessee HUF has been dissolved on 26/03/2014. Now, the Id. Assessing Officer while examining the computation of income and other details noticed that during the year, at the time of dissolution of the HUF, the equity shares held by the HUF were transferred to the members of the HUF and though they were transferred at the cost of acquisition but in the computation of income, long term capital loss has been claimed at Rs.7,29,59,117/-

arising on account of transfer of equity shares to the member and for arriving at the said long term capital loss, market price as on the date of transfer of such equity shares has been taken as the basis. The Id. Assessing Officer further noticed that even though the transfer of the equity shares held with the HUF to its members is not recorded as a transfer for the purpose of income tax, but still a loss has been claimed against the long term capital gain earned from sale of other equity shares during the year prior to dissolution. Though it was admitted by the assessee that it is an inadvertent mistake committed by the accountant but Id. Assessing Officer after disallowing the said claim also initiated the penalty proceedings u/s 271(1)(c) of the Act. Further it is noticed that the assessee did not challenged the addition made in the assessment order as it was tax neutral but the penalty proceedings were initiated and though the assessee made submissions that assessee did not gain anything from claiming the long term capital loss and its was an inadvertent mistake, but Id. Assessing Officer levied penalty of Rs.2,47,33,142/- u/s 271(1)(c) of the Act for concealing the particulars of income. The assessee has challenged the levy of penalty before the Id. CIT(A) but failed to succeed.

3.1. Now, the assessee is in appeal before this Tribunal raising various legal grounds challenging the validity of the penalty order being *void ab initio*, barred by limitation, defective notice u/s 274 of the Act and on merits also it has been stated that there is no evasion of tax on account of the said inadvertent mistake of having claimed the long term capital loss.

On the other hand, the Id. D/R vehemently argued supporting the orders of the lower authorities.

4. We have heard rival contentions and perused the material placed before us. Penalty levied by the Id. Assessing Officer and confirmed by the Id. CIT(A) u/s 271(1)(c) of the Act is in challenge before us. The first legal ground raised by the assessee is that the order passed in the name of the non-existent person is *void ab initio* and bad in law. Placing reliance on the judgment of the *PCIT v. Maruti Suzuki India Ltd.* reported in (2019) 416 ITR 613 (SC), it is claimed before us that the Id. Assessing Officer was very much aware that the assessee HUF has dissolved on 26/03/2014 and, therefore, any further proceedings could not have been carried out in the name of the non-existent entity. We observe that notice u/s 274 of the Act has been issued on 30/12/2016 leveling the charge against the assessee for having furnished inaccurate particulars of income and thereafter framed the penalty order on 30/06/2017 for concealing particulars of income. Admittedly, both the showcause notice u/s 274 of the Act as well as penalty order are in the name of the assessee HUF only. The Hon'ble Apex Court in the case of *PCIT v. Maruti Suzuki India Ltd.* (*supra*), has held that notices and/or the consequent order issued in the name of non-existent person renders the entire proceedings and all consequent actions to be nullity in the eyes of law. Similar view was also taken by the Hon'ble Patna High Court in the case of *Commissioner of Income-tax v. Sanichar Sah Bhim Sah* reported in [1955] 27 ITR 307 (PAT.), wherein also the assessee HUF was completely partitioned and

acknowledged by the Assessing Officer in the assessment order but after completion of the assessee issued notice u/s 28(1)(c) of the Act and levied penalty for concealment of income. The Hon'ble High Court confirmed the view taken by the AAC cancelling the penalty holding that there was no provision in the Act which authorises the ld. Assessing Officer to impose penalty on HUF which had ceased to exist.

4.1. Similar view was taken by the Hon'ble Andhra Pradesh High Court in the case of *Mahankali Subba Rao Mahankali Nageswara Rao v. Commissioner of Income-tax* reported in [1957] 31 ITR 867 (Andhra Pradesh).

5. In view of the above binding judicial precedents and the similarity of facts, we find that the assessee HUF was dissolved on 26/03/2014 and the notices for carrying out the penalty proceedings as well as the penalty order has been made in the name of the non-existent entity. Since this fact goes uncontroverted that the penalty order has been made on a non-existent entity, ratio law laid down in the case of *Maruti Suzuki India Ltd. (supra)* is squarely applicable and accordingly, the penalty proceedings are held *void ab initio*. Thus, the order of penalty levying penalty u/s 271(1)(c) of the Act is quashed and the impugned penalty is hereby deleted.

5.1. We observe that the assessee has raised other legal issues challenging the validity of the penalty proceedings and on merits of the case but since we have allowed the first legal grounds in favour of the assessee and quashed the impugned penalty proceedings, dealing

with the other grounds will be a mere academic exercise and we thus, refrain from dealing with the same.

6. In the result, appeal of the assessee is allowed as per terms indicated above.

**Order pronounced in the Court on 17<sup>th</sup> April, 2024 at Kolkata.**

*Sd/-*

**(SANJAY GARG)  
JUDICIAL MEMBER**

*Sd/-*

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 17/04/2024

*\*SC S.P.*

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata