

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI

**BEFO SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA 4520/Mum/2023
(Assessment year : 2014-15)**

Income-tax Officer, Ward-3(1) Rani Mansion, Murbad Road Kalyan West- 421 301	vs	Geeta Khare, Dombivali West 4th Floor Siddhivinayak Arcade Mahatma Phule Road, Dombivli West – 421 202 PAN : AHOPK7823N
APPELLANT		RESPONDENT

Assessee by : Shri Nilkanth Khandelwal - Advocate
Respondent by : Ms. Sujatha Iyengar SR. AR
Date of hearing : 22/05/2024
Date of pronouncement : 29/ 05/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the Revenue was filed against the order of the Learned National Faceless Appeal Centre, Delhi (NFAC) [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), date of order 30.09.2023 for Assessment Year 2014-15. The impugned order was emanated from the order of the Ld. Assistant Commissioner of Income-tax, Circle-3, Kalyan (in short, 'the Id. A.O. '), order passed under section 271(1)(c) of the Act date of order 20/03/2019.

2. The department has taken the following ground of appeal: -

“1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting penalty u/s 271(1)(c) without appreciating the fact that the appeal of the Revenue on the quantum assessment order is pending before the Hon’ble High Court of Bombay. The appellant craves to leave add, amend or alter or alter any ground/grounds which may be necessary.”

3. The brief facts of the case is that the assessment was completed under section 143(3) and addition was made related to sale of shares for claiming Long Term Capital Gain amounting to Rs.2,26,36,372/-. The addition was confirmed as concealed income amount to Rs.2,26,36,372/-. The penalty was levied at 100% of the tax sought to be evaded which amount to Rs.77,48,540/- and the penalty under section 271(1)(c) of the Act is levied amount to Rs.77,48,540/-. Being aggrieved, the assessee filed an appeal before the CIT(A). But the quantum appeal of the assessee was duly allowed by the order of the ITAT, Mumbai Bench. The matter is now before the Hon’ble High Court and the Ld.CIT(A) followed the same identical issue which was duly in favour of the assessee in the case of **Sashikant B Mehta (HUF) in ITA No.694/Mum/2018**. Ld.CIT(A) duly followed the judicial precedents and quashed the penalty fixed under section 271(1)(c) of the Act. Being aggrieved, the Revenue has filed appeal before us.

4. We heard the rival submissions and considered the documents available in the record. The Ld.DR fully relied on the order of the Ld.Assessing Officer passed under section 271(1)(c) of the Act. The Ld.DR argued and prayed for upholding the penalty order.

4.1. The Ld. AR followed the appeal order, the relevant paragraphs 6 to 9 are reproduced below: -

“6. Similarly, the sale of the said shares for Rs 1,41,08,484/- through two Brokers namely, M/s Richmond Securities Pvt Ltd and M/s Scorpio Management Consultants Pvt Ltd cannot be disputed, because the fact that the Assessee has received the said amount is not in dispute. It is neither the case of the Revenue that the shares in question are still lying with the Assessee nor it is the case of the Revenue that the amounts received by the Assessee on sale of the shares is more than what is declared by the Assessee. Though there is some discrepancy in the statement of the Director of M/s Richmand Securities Pvt Ltd regarding the sale transaction, the Tribunal relying on the statement of the employee of M/s Richmand Securities Pvt Ltd held that the sale transaction was genuine.

7. In these circumstances, the decision of the ITAT in holding that the purchase and sale of shares are genuine and therefore, the Assessing Officer was not justified in holding that the amount of Rs 1,41,08,484/- represented unexplained investment under section 69 of the Income Tax Act, 1961 cannot be faulted. 8. In the result, we see no merit in this Appeal and the same is dismissed with no order as to costs.

7.10. In view of the aforesaid findings in the facts and circumstances of the case and respectfully following the various judicial precedents relied upon hereinabove, we hold that the Id CITA was not justified in upholding the action of the Id AO in bringing the long term capital gains on sale of shares of SRK Industries Ltd in the sum of Rs 2,26,36,372/- as unexplained income of the assessee treating the same as just an accommodation entry. The Id AO is directed to grant exemption u/s 10(38) of the Act in the sum of Rs 2,26,36,372/- to the assessee. Accordingly, the ground raised by the assessee is allowed.

8. Both the parties before us agreed that the facts in ITA No. 694/Mum/2018 in the case of Shri Shashikant B Mhatre (HUF) are identical to that of Smt Geeta Khare supra except with variance in figures

and name of the scrip that was dealt with. Both the parties before us stated that identical reasoning was given by both the lower authorities for denying the claim of exemption u/s 10(38) of the Act to the assessee. The decision rendered in the case of Smt Geeta Khare would apply with equal force for this assessee also and accordingly, the ground raised by the assessee in ITA No. 694/Mum/2018 is allowed.

9., In the result, both the appeals of the assessee are allowed."

4.2. The issue is squarely covered, and the quantum appeal of the assessee was duly allowed by the ITAT Mumbai Bench. So, there is no penalty applicable for the assessee U/s 271(1)(c) of the Act. Accordingly, the impugned penalty order of the assessee has no leg to stand. In our considered view, we are not interfering in the appeal order. Hence, appeal order is upheld.

6. In the result, appeal of the Revenue bearing **ITA No.4520/Mum/2023** is dismissed.

Order pronounced in the open court on 29th day of May, 2024.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 29/05/2024

Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**