THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, KOLKATA

Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Sanjay Awasthi, Accountant Member

I.T.A. Nos. 556 & 557/KOL/2023)
Assessment Year: 1999-2000
&

I.T.A. Nos. 558 & 559/KOL/2023)
Assessment Year: 2000-2001
&
I.T.A. Nos. 560 & 561/KOL/2023)
Assessment Year: 2001-2002
&
I.T.A. Nos. 562 to 564/KOL/2023)
Assessment Year: 2002-03 to 2004-05
&
I.T.A. Nos. 565 & 566/KOL/2023)
Assessment Year: 2004-05 to 2005-06
&
I.T.A. Nos. 567/KOL/2023)
Assessment Year: 2005-2006
&
I.T.A. Nos. 568 & 569/KOL/2023)
Assessment Year: 2007-2008
&
I.T.A. Nos. 570 & 571/KOL/2023)
Assessment Year: 2008-2009
&
I.T.A. Nos. 572 & 573/KOL/2023)
Assessment Year: 2009-2010
&
I.T.A. Nos. 574 & 575/KOL/2023)
Assessment Year: 2010-2011
&
I.T.A. Nos. 576 & 577/KOL/2023)

Assessment Year: 2011-2012
&
I.T.A. Nos. 578 & 579/KOL/2023)
Assessment Year: 2013-2014

Deputy Commissioner of Income Tax,.....Appellant
Central Circle-4(2), Kolkata,
-Vs.-

Nalini Bhaskaran,..... Respondent
16/2, Raja Santosh Road,
New Alipore, Kolkata-700027
[PAN: ADSPB8802A]

-A N D -

I.T.A. Nos. 580 to 582/KOL/2023)
Assessment Years: 1999-2000 to 2001-2002
&
I.T.A. Nos. 583 & 584/KOL/2023)
Assessment Years: 2004-2005 & 2005-2006
&

I.T.A. Nos. 585 to 586/KOL/2023)
Assessment Years: 2007-2008 to 2008-2009
&

I.T.A. Nos. 587 & 588/KOL/2023)
Assessment Years: 2009-2010 & 2011-2012
&

I.T.A. Nos. 589 & 590/KOL/2023)
Assessment Years: 2011-2012 & 2013-2014

Deputy Commissioner of Income Tax,.....Appellant
Central Circle-4(2), Kolkata,
-Vs.-

Tharur Bhaskaran,..... Respondent

16/2, Raja Santosh Road,
New Alipore, Kolkata-700027
[PAN: ADJPB0977D]

Appearances by:
Shri B.K. Singh, Addl. CIT, appeared on behalf of the Revenue
Shri Aayush Kedia, C.A., appeared on behalf of the assessees

Date of concluding the hearing: June 04, 2024
Date of pronouncing the order: June 05, 2024

O R D E R

Per Bench:-

The present bunch of 35 appeals is directed at the instance of Revenue. The details of each appeal is being tabulated as under:-

Sr.No.	ITA No.	A.Y.	Name of Assessee	Date of CIT(A)'s order	Section under which passed	Date of AO's order	Section under which passed
1	556/K/23	1999-2000	Nalini Bhaskaran	08.07.2022	250	27.03.2015	147/144
2.	557/K/23	1999-2000	Nalini Bhaskaran	12.07.2022	250	13.04.2015	271(1)(c)
3.	558/K/23	2000-2001	Nalini Bhaskaran	08.07.2022	250	27.03.2015	147/144
4.	559/K/23	2000-2001	Nalini Bhaskaran	12.07.2022	250	13.04.2015	271(1)(c)
5.	560/K/23	2001-2002	Nalini Bhaskaran	08.07.2022	250	27.03.2015	147/144
6.	561/K/23	2001-2002	Nalini Bhaskaran	12.07.2022	250	13.04.2015	271(1)(c)
7.	562/K/23	2002-2003	Nalini Bhaskaran	08.07.2022	250	13.04.2015	147/144
8	563/K/23	2003-2004	Nalini Bhaskaran	08.07.2022	250	13.04.2015	147/144
9	564/K/23	2004-2005	Nalini Bhaskaran	08.07.2022	250	27.03.2015	147/144
10	565/K/23	2004-2005	Nalini Bhaskaran	12.07.2022	250	13.04.2015	271(1)(c)
11	566/K/23	2005-2006	Nalini Bhaskaran	08.07.2022	250	27.03.2015	147/144
12	567/K/23	2005-2006	Nalini Bhaskaran	12.07.2022	250	13.04.2015	271(1)(c)
13	568/K/23	2007-2008	Nalini Bhaskaran	08.07.2022	250	27.03.2015	147/144

14	569/K/23	2007-2008	Nalini Bhaskaran	12.07.2022	250	13.04.2015	271(1)(c)
15	570/K/23	2008-2009	Nalini Bhaskaran	08.07.2022	250	27.03.2015	147/144
16	571/K/23	2008-2009	Nalini Bhaskaran	12.07.2022	250	13.04.2015	271(1)(c)
17	572/K/23	2009-2010	Nalini Bhaskaran	11.07.2022	250	27.03.2015	147/144
18	573/K/23	2009-2010	Nalini Bhaskaran	12.07.2022	250	13.04.2015	271(1)(c)
19	574/K/23	2010-2011	Nalini Bhaskaran	11.07.2022	250	27.03.2015	147/144
20	575/K/23	2010-2011	Nalini Bhaskaran	12.07.2022	250	13.04.2015	271(1)(c)
21	576/K/23	2011-2012	Nalini Bhaskaran	11.07.2022	250	27.03.2015	147/144
22	577/K/23	2011-2012	Nalini Bhaskaran	12.07.2022	250	13.04.2015	271(1)(c)
23	578/K/23	2013-2014	Nalini Bhaskaran	11.07.2022	250	13.04.2015	147/144
24	579/K/23	2013-2014	Nalini Bhaskaran	12.07.2022	250	23.04.2015	271(1)(c)
25	580/K/23	1999-2000	Tharur Bhaskaran	29.06.2022	u/s 250	13.04.2015	271(1)(c)
26	581/K/23	2000-2001	Tharur Bhaskaran	29.06.2022	u/s 250	13.04.2015	271(1)(c)
27	582/K/23	2001-2002	Tharur Bhaskaran	29.06.2022	u/s 250	13.04.2015	271(1)(c)
28	583/K/23	2004-2005	Tharur Bhaskaran	29.06.22	u/s 250	13.04.2015	271(1)(c)
29	584/K/23	2005-2006	Tharur Bhaskaran	29.06.2022	u/s 250	13.04.2015	271(1)(c)
30	585/K/23	2007-2008	Tharur Bhaskaran	29.06.2022	u/s 250	13.04.2015	271(1)(c)
31	586/K/23	2008-2009	Tharur Bhaskaran	30.06.2022	u/s 250	13.04.2015	271(1)(c)
32	587/K/23	2009-2010	Tharur Bhaskaran	30.06.2022	u/s 250	13.04.2015	271(1)(c)
33	588/K/23	2010-2011	Tharur Bhaskaran	30.06.2022	u/s 250	13.04.2015	271(1)(c)
34	589/K/23	2011-2012	Tharur Bhaskaran	30.06.2022	u/s 250	13.04.2015	271(1)(c)
35	590/K/23	2013-2014	Tharur Bhaskaran	30.06.2022	u/s 250	23.04.2015	271(1)(c)

2. The Registry has pointed out that all these appeals are time barred by 248 days. In order to explain the delay, Department has filed an application for condonation of the delay and such application reads as under:-

"Nalini Bhaskaran
A.Y. 1999-2000
<u>Condonation of Delay</u>

1. The appellant/petitioner states that being aggrieved by and dissatisfied with the impugned Order of the Ld. CIT(A) -21, Koi's order dated 12.07.2022 in Appeal No. C1T(A), Kolkata-21/10440/2015-16

for A.Y. 1999-2000 in the case of Nalini Bhaskaran, an appeal has been preferred before this Hon'ble ITAT.'A' Bench, Kolkata under section 253 of the I.T. Act, 1961.

2. The appellant/petitioner states that the impugned order passed by the Ld. CIT(A)-21, Kolkata on 12.07.2022 was received by the office of the Pr. Commissioner of Income Tax, Central-2, Kolkata, on 02.08.2022. Your petitioner states that according to the Income Tax Department, the last date of filing the appeal expired on 01.10.2022.

3. Your petitioner states that there are sufficient reasons/ causes for condoning the delay in filing the Appeal under Section 253 of the Income Tax Act, 1961 (hereinafter 'the Act"), which are as follows:-

4. After receiving the said impugned order and upon completion of due departmental procedure, the Assistant Commissioner of Income Tax, (Hqrs)-Central. Kolkata-2 vide letter dated 25.07.2022 requested the Deputy Commissioner of Income Tax, Circle-4(2), Kolkata to prepare Appeal Scrutiny Report (ASR) and to send the same to the Pr. Commissioner of Income Tax, Central-2, Kolkata (hereinafter 'PCIT-Central 2, Kolkata) along with the Assessment records in order to examine the issue of filing Appeal under Section 253 of the Income Tax Act 1961.

5. The ASR is submitted to the office of the Addl./Joint Commissioner of Income Tax, Central, Range-4, Kolkata on 05.09.2022 for onward transmission to the office of the Pr. CIT, Central-2, Kolkata for his kind perusal and taking necessary action.

6. The office of the Principal Commissioner of Income Tax, Central-2, Kolkata on 10.10.2022 vide letter no. PCIT(C)/Kol-2/253/ASR/2022-23/4345 accorded his kind approval for filing 2nd Appeal under section 253 before the Hon'ble IT AT, Kolkata.

7. It is pertinent to mention here that the Assessing Officer was burdened with time barring assessment works till 30th September, 2022, hence, the Appeal u/s 253 could not be filed within the stipulated limitation date of 01.10.2022.

8. Your petitioner further wants to state that in the meantime, there was change of incumbency on couple of occasions under this charge and the undersigned has taken over this charge only in the month of November, 2022.

9. Moreover, it is also to mention here that the Assessing Officer was also burdened with time barring assessment works under section 143(3) of the I.T. Act till 31st December, 2022, section 147 of the Act, till 31st

March, 2023 and also section 147A of the Act till 30th April, 2023 respectively.

10. Huge number of relevant documents, as required for, in this Group being prepared in respect of filing the appeal before the Hon'ble ITAT for which the time was consumed beyond the normal time limit.

11. Your petitioner states that due to reasons stated herein before, which was beyond the control of the Petitioner, Your petitioner could not file the Appeal within the stipulated time and there is a delay in filing the Appeal.

12. Your petitioner states that there was no willful and deliberate latches and/or negligence on the part of petitioner in filing appeal.

13. In the aforesaid facts and circumstances the appellant/petitioner most humbly submits that due to unavoidable situation and circumstances, which were beyond the control of Your petitioner, there is a delay in filing the instant appeal. Such delay is unintentional and such delay may be condoned by this Hon'ble ITAT, Kolkata and the instant appeal may be heard and the appeal be registered.

14. Your petitioner states that the last date to file this appeal was 01.10.2022 and as such, there is a total delay of 247 days in filing the instant appeal.

15. Your petitioner respectfully submits that exceptional clause i.e. maintaining of Foreign Bank Accounts involved in the matter. That apart, a substantial amount of tax effect is also involved in the matter.

16. Unless and until the orders are passed as prayed for your petitioner will suffer irreparable loss and injury.

17. This application is made bonafide and for the interest of justice.

Under the above facts and Circumstances the Appel lant/Petitioner most humbly prays that Your Lordship may graciously be pleased to pass the following orders:-

(a) Delay of 247 days in preferring the instant appeal be condoned and the aforesaid appeal be registered and restored to file and be heard on merit;

(b) Such other or further order or Orders and/ or direction or directions be given as this Hon'ble Court may deem fit and proper.

And for the act of kindness your petitioner as in duty bound shall ever pray.

Sd/-
(Amit Kumar Barua)
Deputy Commissioner of Income Tax
Central Circle - 4(2), Kolkata".

3. The Registry has pointed out that the appeals are time barred by 248 days and in order to explain the delay, the Revenue has filed an application for condonation of delay. With the assistance of the ld. Representatives, we have gone through the record carefully. Sub-section 5 of Section 253 contemplates that the Tribunal may admit an appeal or permit filing of memorandum of cross- objections after expiry of relevant period, if it is satisfied that there was a sufficient cause for not presenting it within that period. This expression sufficient cause employed in the section has also been used identically in sub-section 3 of section 249 of Income Tax Act, which provides powers to the ld. Commissioner to condone the delay in filing the appeal before the Commissioner. Similarly, it has been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction of this expression has fallen for consideration before Honble High Court as well as before the Honble Supreme Court, then, Honble Court were unanimous in their conclusion that this expression

is to be used liberally. We may make reference to the following observations of the Hon'ble Supreme court from the decision in the case of Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to

have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

4. Similarly, we would like to make reference to authoritative pronouncement of Honble Supreme Court in the case of N. Balakrisknan Vs. M. Krishnamurtky (supra). It reads as under:

> *"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the*

courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi lain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Could should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss".

5. We do not deem it necessary to re-cite or recapitulate the proposition laid down in other decisions. It is suffice to say that the Honble Courts are unanimous

in their approach to propound that whenever the reasons assigned by an applicant for explaining the condonation of delay, then such reasons are to be construed with a justice oriented approach.

6. In the light of above, if we peruse the application filed by the Revenue, then, it would reveal that though process of filing these appeals was initiated well in time, but on account of movement of files at different levels, the delay has occurred. There is no deliberate attempt at the end of any of the authorities for filing these appeals after expiry of limitation. It is pertinent to observe that no appellant will gain by making the appeals time barred. The Revenue would never adopt delay as a strategy to litigate with the tax payer. On certain occasion, such delay happened on account of taking approval from different authorities at different levels. Therefore, after hearing both the sides, we deem it appropriate to condone the delay in the interest of justice and decide all these appeals on merit.

7. Earlier these appeals were disposed of on the ground that the tax effect by virtue of relief given by the ld. CIT(Appeals) is less than the monetary limit. However, Revenue has filed Miscellaneous Applications bearing Nos. 86 to 120/KOL/2023. It was pleaded by the Revenue that these cases fall within Clause (d) of Sr. No. 10 of Circular No. 17 of 2019. Clause (d) would contemplate that where addition relates to undisclosed foreign asset/bank accounts, then, irrespective of tax effect, appeals to be filed and decided on merit.

It was submitted by the Revenue that these additions were made on the basis of foreign account found in the name of the assesses. Therefore, these are to be decided on merit. These applications were allowed vide order dated 5th April, 2024. All these appeals were restored to their original numbers.

8. In response to the notice of hearing, Shri Aayush Kedia, C.A. appeared on behalf of the assessees. He sought an adjournment on the ground that ld. Sr. counsel Shri Sanjay Modi is unable to argue the matter because his father suffered from heart attack. He sought a brief adjournment. We find that on the Power of Attorney, three professionals from the firm of Shri Sanjay Modi, C.A. have put their signatures upon which neither the signature of Shri Sanjay Modi nor Shri Aayush Kedia are available. Therefore, we requested the ld. Counsel to direct someone to appear before the Bench virtually.

9. At the very outset, ld. Counsel for the assesses has pointed out that as far as the cases of Smt. Nalini Bhaskaran are concerned, they can be divided in two compartments, namely (a) quantum appeals and (b) penalty appeals. In quantum appeals, additions were made on protective basis. However, ld. 1st Appellate Authority has deleted those additions on the ground that same amounts stand confirmed on substantive basis in the hands of her husband, who owned up the accounts. It is pertinent to observe that this account was stated to be a joint account, but all the

amounts available in the accounts owned up by the husband of the assessee accepting that the contention of the assessee, ld. CIT(Appeals) has deleted the protective additions made in the hands of Nalini Bhaskaran.

10. It has been submitted before us that the husband of Mrs. Nalini Bhaskaran Shri Tharur Bhaskaran has not challenged these quantum additions made on substantive basis.

11. The ld. Sr. D.R. was unable to controvert this fact. He only submitted that the appeals were filed under the apprehension that the husband of the assessee would challenge those substantive additions in further appeals before the Tribunal. It has been stated at bar by the assessee that these additions have not been challenged by the husband. It is pertinent to note that once the alleged amount stands assessed on substantive basis in the hands of the person in whose name such additions were made by the ld. Assessing Officer. There is no idea to continue the litigation in the hands of a person where protective addition was made by the ld. Assessing Officer. Therefore, we do not see any justification to interfere in the finding of ld. CIT(Appeals). All quantum appeals in the case Mr. Nalini Bhaskaran are dismissed.

12. As far as ITA Nos. 557/KOL/2023 & other penalty appeals are concerned, these are the appeals directed by the Revenue in the case of Nalini Bhaskaran. The ld. CIT(Appeals) has deleted the

penalty levied upon her under section 271(1)(c) on the ground that the quantum additions stand deleted because it was made only on protective basis. Sub-clause (iii) of section 271(1)(c) provides a mechanism to compute the penalty leviable under section 271(1)(c) of the Income Tax Act. This clause reads as under:-

> *"Failure to furnish returns, comply with notices, concealment of income, etc.*
>
> *271.(1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—*
>
> *(a) [***]*
>
> *(b) xxxxxxxx*
>
> *(c) xxxxxxx*
>
> *(d) xxxxxxx*
>
> *(i) [***]*
>
> *(ii) xxxxxxxx ;*
>
> *(iii) in the cases referred to in clause (c) or clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits".*

13. A perusal of sub-clause (iii) of section 271(1)(c) would indicate that penalty would be equivalent or to the extent of three times of taxes, if any, payable by an assessee of the addition made to his income could be charged under this sub-clause. In the present

case, no addition has attained finality ultimately. Income of the assessee has been determined equivalent to the amount disclosed by her. Neither any losses have been disallowed nor any addition has been made, therefore, the very foundation to compute the penalty is extinguished. In this situation, no penalty is imposable upon the assessee. It is pertinent to note that ld. CIT(Appeals) has deleted the penalty. Accordingly, we dismiss the appeals of the Revenue and confirm the deletion of penalties.

14. Now we proceed to take up the appeals filed by the Revenue in the case of Tharur Bhaskaran, i.e. **ITA Nos. 580 to 590/KOL2023.**

15. At the very outset, ld. Counsel for the assessee submitted that in these cases, penalty was imposed by the ld. Assessing Officer under section 271(1)(c). However, while imposing the penalty, it was levied @ 300%. On appeal, ld. CIT(Appeals) has restricted this to 100%. The assessee has not challenged the order of ld. CIT(Appeals) and accepted that. However, Revenue is aggrieved by the order of ld. CIT(Appeals) contending therein that penalty ought to have been imposed @ 300%.

16. On the other hand, ld. Sr. D.R. relied upon the order of ld. Assessing Officer and submitted that the assessee failed to disclose the foreign assets and it could be discovered out of due deliberation at the end of the Revenue. Therefore, in such cases, penalty ought

to be imposed on a little higher rate than imposed normally in other cases by reason of the concealment of particulars of his income or by furnishing inaccurate particulars of income.

17. On the other hand, ld. Counsel for the assessee relied upon the order of ld. CIT(Appeals).

18. We find that the ld. 1st Appellate Authority while restricting the penalty @ 100%, has discussed the issue elaborately and the finding of the ld. CIT(Appeals) reads as under:-

> "*I have carefully examined the entire material on record including the submissions of the appellant. I find that the appellant has agitated the imposition of penalty on the basis of an alleged legal defect in the issue* of notice. Since all the grounds are inter-related and the appellant has also given a consolidated submission, all the grounds are being disposed as one.
>
> *The appellant has argued that the AO, at the time of issue of notice for imposition of the said penalty u/s 271 (1)c of the Act, has failed to specify the specific charge sought to be brought against the appellant. In these circumstances, since the appellant has not been confronted with the specific charge against him, the notice issued for the imposition of the penalty loses its very basis and this defect, since it has not been cured, makes the entire proceedings void in the eyes of law. This therefore makes the imposition of penalty unlawful and therefore deserving to be struck down.*
>
> *In support of his claim of a defective notice, the appellant has submitted a copy of the notice dated 27.03.2015 issued to him by the AO. The appellant has pointed out that the AO has not struck out one of the phrases that constitute part of section 271(1)(c) and upon which the said penalty under this section is imposable, that is,*
>
> *(i) concealed the particulars.*
> *(ii) Furnishing of inaccurate particulars.*
>
> *The appellant has asserted that this omission makes it fatal for the notice and therefore the penalty is no longer imposable in such a case.*

In support of his proposition the appellant has placed reliance upon several decisions of various judicial authorities as reproduced above.

I have carefully studied the appellant's case especially in the context of the various judicial authorities relied upon by him. In my view, this is a matter involving careful analysis of the facts as they existed at the time of issue of the impugned notice as well as the subsequent penalty proceedings.

I find from the submissions of the appellant as well the assessment folder that the AO has issued the notice for penalty - not in the form of a cyclostyled or pre-printed notice in which just the particular details of the assessee as well as other details had to be filled in by hand. The notice in this case has been issued in the form of a letter dated 27.03.2015 - a copy of which has been duly produced by the appellant himself; thereby removing any dispute in this regard.

Since the dispute has arisen on account of the allegation of the appellant that a specific charge had not been specified in the said notice, it is instructive to reproduce the relevant excerpt from the said notice. The notice says,

> *"Whereas in the course of proceedings before me for the assessment year 1999-2000, it appears that you have concealed the particulars for furnished inaccurate particulars of such income.*
>
> *You are hereby……"*

The notice then goes on to specify the relevant section of the Act as being 271(1)(c).

It is easy to see how the appellant has misdirected himself by the fortuitous fact that the AO, in the language of the impugned notice has chosen to use the same phrases as are mentioned in the Act. A simple reading of the language used by the AO in the above said notice shows that the AO is framing the charge of the appellant having "concealed the particulars of his income" (with the motive of) providing of inaccurate particulars of his income. The meaning of this plain English text is straightforward. The AO has found out during reassessment proceedings that the appellant had deliberately supplied inaccurate particulars at the time of filing of his return. The motive therefore in the mind of the appellant was clearly to evade tax and for this he filed a false return. With this object in mind the appellant decided upon the strategy of concealing particulars of his income,through the mode of nondisclosure of certain bank accounts. The motive and the particular act are two distinct things. While the motive was unarguably not to pay

the requisite taxes by giving wrong particulars of income, this was clearly done through the mode of concealment of the bank accounts where this undisclosed income was kept.

In this case, the AO is recognizing the fact that the appellant deliberately gave wrong information; but having recognized this, he is charging the appellant with concealment "for" (the purpose of) providing wrong particulars. The word emphasised here is "for", as against the word used in the Act,

If the word used in the notice would have been "or" then there could have been some merit in the appellant's contention that he was unclear about the charges being brought against him. In the present case, however, as discussed above, the use of the word "for" clearly separates the "charge against the appellant" from the "motive or object of the appellant" as observed and given appropriate treatment by the AO in his reassessment order.

I find therefore that the reliance of the appellant upon the various judgements cited by him is misplaced and shows that he has not appreciated the facts properly. To quote from the decision of the Hon'ble Income Tax Appellate Tribunal, Agra in the case of Smt. Sarla Devi, Aligarh vs Ito Ward 1(1), Aligarh delivered on 18 May, 2018, I.T.A No. 70/Agra/2017, (AY 2007-08), in which their honours have delved deeply into this matter and discussed various judgements delivered in this context:

> *"it is quite clear, that 'suppressiovari', or 'suppression of truth', which has, in section 271(1)(c)of the IT Act, as its equivalent, 'concealment of income', and suggestiofalsi', literally, 'suggesting or stating a falsehood', which manifests itself as 'furnishing of inaccurate particulars thereof, are two distinctly separate charges; that leveling of either of these charges has to be explicitly brought to the notice/knowledge of the assessee, sans which, the assessee, under a nebulous notice containing both these charges, is rendered incapable of defending the charge perse. "*

The fact is that this was net a pre-printed notice but was sent in the form of a separately composed letter after due application of mind by the AO. The language used therein is very specific and unambiguous, as discussed supra. The difference between 'suppressiovari' and 'suggestiofalsi', as mentioned in the above excerpt from the citation is very clear in the mind of the AO, and had appropriately been reflected in the notice issued by him.

In addition to the above discussions, the fact is that the appellant did not raise this objection at all before the AO despite the fact that he was

afforded reasonable opportunity to respond to the notice. This only goes to show that this objection has come only as an afterthought to the appellant during appeal. While it is true that a legal objection can be raised at any juncture of various appellate stages, in cases such as these it is also pertinent to notice that the appellant has not provided any reason as to why he did not raise this objection before the AO, especially since it has been noticed that he had been raising several objections during reassessment proceedings against notices u/s 148. It needs also to be mentioned that the fact that the impugned order was passed by the AO after some days after the date fixed for the hearing of the appellant, does not in any way vitiate the penalty proceedings, nor does it imply that the appellant has not been provided ample opportunity. The appellant has brought nothing on record to show that he could not, due to some reasons, attend the proceedings, or that the time provided was very short, or that he required more time to respond.

In view of the above discussions, I cannot agree with the contentions of the appellant that the imposition of penalty was in any way bad in law on legal or procedural grounds.

As regards the penalty itself, the appellant has offered virtually no explanation as to why these bank accounts were concealed. The explanation offered, that the moneys in these bank account were deposited by third party for expenses to be incurred abroad by the appellant and that none of this money was used by the appellant raises more questions than it answers. The appellant has also not adduced any evidence in this regard. Given that the fact of concealment has been established and that no reasonable explanation has been offered by the appellant as to why this concealment was resorted to, I cannot find fault with the imposition of penalty u/s. 271 (1)(c) in this case.

Coming to the quantum of penalty itself, I find that the appellant has submitted vide his submissions that the quantum itself is highly excessive and uncalled for because of various reasons which includes the fact that the appellant, even though an elderly person, of about 78 years of age, at the time that his deposition was taken in 2011, cooperated with the Department to every possible extent and even went on record u/s 131 in giving all particular details in relation to the bank account. In his statement under oath, he never refuted that these were his bank accounts. Never tried to say that these had already been declared before the Department. He owned up all the money that was present in the bank accounts, even giving approximate figures that was the balance in the said accounts. The appellant had clearly admitted that all the money that was deposited in the said accounts was his own money and not that of his wife. Thereafter, he cooperated with the proceedings before the AO in willingly signing the consent

waiver form, enabling the Department to get the Bank A/c details from HSBC.

In order to adjudicate upon the issue of whether the penalty imposed by the AO - that of 300% - was excessive or not, it is important to appreciate the law as it stands in respect of section 271(1)c. While it is trite law that the said section creates a presumption against the appellant and there is no necessity for proving mens Rea for the imposition of penalty, there is also a second limb of this section. This relates to the actual quantum of penalty that is to be imposed - whether 100% or more, going up to 300%. Once it has been established that particular case is a fit case for imposition of penalty, the next limb comes into effect. At this stage, the AO has to exercise his discretion to decide as to what would be the actual quantum of penalty that was fit to be imposed in that particular case. This discretion, however, is not arbitrary and has to be applied judiciously and lawfully. Since the discretion for deciding upon the actual quantum lies with the AO, the onus shifts to the AO for bringing on record the reasons for applying a particular rate of penalty. What this implies is that the AO has to take into account all the facts and circumstances of the particular case and to bring on record the circumstances that lead to the imposition of penalty at a particular rate.

In this particular appeal, I find that while the imposition of penalty per se has been done properly and as per law, the AO has nowhere brought on record any reasons for the imposition of penalty at the maximum rate of 300%. I do not find that the AO has even discussed this matter. If an assessee has to be penalised at a maximal rate, then it is the duty of the AO to ensure that the reasons are brought on record for the aggravating circumstances that led to the imposition of penalty at the maximum rate. If this is not done, then it vitiates the entire process of exercise of the said discretion in determining the rate of penalty to be imposed. This can hardly be considered a lawful method. I find that the Hon'ble Supreme Court, while laying down the law with reference to interpretation of statutes held in Kehar Singh v. State [AIR 1988 SC 1889] - "... In the past, the Judges and lawyers spoke of a golden rule by which statutes were to be interpreted according to grammatical and ordinary sense of the word. They took the grammatical or literal meaning unmindful of the consequences. Even if such a meaning gave rise to unjust results which legislature never intended, the grammatical meaning alone was kept to prevail. They said that it would be for the legislature to amend the Act and not for the court to intervene by its innovation. During the last several years, the golden rule has been given a go-by. We now look for the intention of the legislature or the purpose of the statute. First, we examine the words of the statute. If the words are precise and cover the situation in

hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine an Act as a whole. We examine the necessity which gave rise to the Act. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provision as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin, I/I/e will consider the provisions to ensure coherence and consistence within the law as a whole and to avoid undesirable consequences." Jagdish T Punjabi J

I find that this general-principle, in its limited form, can be applied to the authority imposing a penalty. In cases such as the present one, where there is a discretion vesting with the AO, and there is no legislatively prescribed rule for the rate at which a penalty can be imposed, the Hon'ble Court directs such authority to become even more circumspect and to evaluate the facts and circumstances that lead such authority to a particular decision in terms of quantum. These facts cannot be idle whims, or mental impressions, but have to be cogently brought on record.

Without the particular circumstances that led to the making up the mind of the AO that this was a fit case of imposition of penalty at an enhanced or the maximum possible rate, being brought on record by the AO, it is not possible to sustain the imposition at the maximum rate.

I find that the true construction of a charging provision including a provision for charging penalty must receive the construction explained in Cape Brandy Syndicate v. IRC [(1921) 1 KB 64]. It has been held that if a statute intends to impose a penalty or a charge, it must be expressed in clear and unambiguous language. If the provision is reasonably clear, the courts have no jurisdiction to mitigate harshness. However, if the provision is capable of alternative meanings, the courts will lean in favour of the subject. It was explained that the general rule is that a penalty shall not be considered to be imposed without a plain declaration of the Legislature. One is simply to go to the Act itself to see that the penalty claimed is that which the Legislature has enacted. No penalty can be levied on any doctrine of "the substance of the matter" as distinguished from its legal signification, as a subject is not liable to penalty on "supposed spirit of law or by inference or by analogy". Lord Summer has observed in

Ormand Investment Co. v. Betts [(1928) AC 143] "the Crown does not tax by analogy but by statute." - CIT v. Maskara Tea Estate [(1981) 130 ITR 955 (Gauh)].

In view of the fact that in a case where there is discretion lent to the AO for deciding upon the actual quantum of penalty imposable in a particular case, it is clear that the above rule of "leaning in favour of the subject" would be applicable as a default position to be taken by the AO. A corollary of this rule would be that wherever the exercise of discretion points to a divergence from this principle, the onus is cast upon the authority imposing the penalty to bring on record the circumstances that lead to the formation his mind of the necessity of this divergence. That this bringing on record has to be based upon cogent reasoning and/or tangible evidence is exemplified by their Honours in CIT v. Maskara Tea Estate [(1981), wherein it is clarified that the particular quantum, was arrived at by the AO through tangible evidence and reasoning and not based upon some supposed "spirit of law or by inference or by analogy.'.

It has been held in Pratap Singh v. State of Jharkhand [(2005) 3 SCC 551] that in construing a penal statue, the object of the law must be clearly borne in mind. Further the Hon'ble Apex Court in Dilip Kumar Sharma v. State of Madhya Pradesh AIR 1976 SC 133] has explained that if two constructions are possible upon the language of the statute, the Court must choose the one which is consistent with good sense and fairness, and eschew the other which makes its operation unduly oppressive, unjust or unreasonable, or which would lead to strange, inconsistent results or otherwise introduce an element of bewildering uncertainty and practical inconvenience in the working of the statute. In CIT v. Vegetable Products Ltd [(1973) 88 ITR 192 (SC)] and C.A. Abraham v. ITO [(1961) 41ITR 425 (SC)]. The guideline for the imposition of penalties has been brought forth, wherein it has been stated that a penalty provision should be interpreted as it stands and in case of doubt in a manner favourable to the taxpayer. If the Court finds that the language of a taxing provision is ambiguous or capable of more meaning than the one, then the Court has to adopt the interpretation which favours the assessee, more particularly so, where the provision relates to the imposition of penalty. It is clear that this applies more so to the exercise of discretion vesting with the authority imposing the penalty and in actually determining the quantum of penalty that should be imposed in a particular case.

It is clear from the above discussions, that while the appellant had indeed concealed the particulars of the bank account with the deposits in them, he by no means tried to obstruct the investigation and willingly admitted the ownership of the said bank accounts as well as the moneys in them. He also willingly signed the consent waiver form that led to the clearing of the way for the assessing officer getting the bank statements. This is despite the obvious hardship that would be caused to him at his advanced age. His wife, and legal representative, despite her own bereavement and her own advancing years and limitation of sources of income, has similarly submitted that she is trying to honour the commitments of her husband. The appellant has stated that the cooperation from the appellant had come in the spirit of avoiding long litigation and to buy peace of mind.

I find that it is trite law that there can be no imposition or non-imposition of penalty based upon some form of understanding between an assessee and the Department. An offer of income for taxation cannot be made conditional upon the imposition or non-imposition of penalty. However it is equally true that the actual quantum of penalty that is imposed can be mitigated by conduct of the assessee and other attenuating circumstances, of course, remaining within the statutorily imposed limits of 100% to 300%. This is the essence of the discretionary power given to the authority imposing the penalty.

In the present facts and circumstances I find that the appellant had admitted readily to the ownership of the said bank accounts as well as the fact that all the deposits made in these accounts were owned by him. He had readily signed the consent waiver form necessary for the Department to get the bank statements from the bank. The appellant at this stage, in 2011, was already 78 years of age. I find force in the contention of the appellant that he wished to end this entire litigation and wished to come out clean.

In the interim, when the reassessment proceedings necessary to bring the amount in the bank to tax were going on, I find that the appellant, who already was 78 years of age at the time that his deposition was taken, expired during these proceedings. He is survived mainly by his wife, who is taking care of these appeals of her late husband.

She has explained that the amounts found in the banks were actually deposited there in order to help her late husband to bear the cost of visits abroad, in the course of performance of his duties and no part

of the money was personally enjoyed by her late husband or by her. She has stated that even though this was the factual position, but in order to uphold and honour the admissions made by her late husband she was making endeavours, only on her own account, to clear all the tax dues of her late husband.

Mrs. Nalini Bhaskaran, the wife of late Shri Tharoor Bhaskaran is now surviving on her own savings and the savings of her late husband. She is already 78 years of age and wishes these matters to be finally settled in order to get some of peace of mind, while also settling the dues in the name of her late husband. I find that the addition has been confirmed in the hands of her husband by me. Also, I cannot disagree with the AO that under the circumstances, since the said banks accounts had undisputedly not been declared by the appellant before the Department, the case for concealment is clearly established in the absence of any reasonable explanation. However, I cannot agree with the AO that this was a fit case for levy of penalty at the rate of 300% of the tax sought to be evaded - which would be tantamount to penalising the appellant to the highest level permissible as per law. While it is undeniably a fact that the appellant did indeed conceal particulars of his income, I cannot find anything brought on record by the AO in his order that this was a fit case for imposition of penalty at the maximum rate. For this highest rate to be attracted, some material has to be brought on record that lends support to this extreme inference to be drawn by the AO.

I find that the AO was very well in possession of all the facts discussed above, including the cooperation by the appellant in making admissions on oath, in signing the consent waiver forms etc. The fact that the appellant could not submit any other material in his favour during the penalty proceedings, was on account of the fact that the appellant himself had expired and his wife, at her age, could not be expected to keep abreast of all the legal goings on in her late husband's case. These mitigating circumstances, in my view, should have been taken into account or at least discussed properly by the AO before determining the quantum of penalty to be imposed. The AO has not done this at all. I therefore cannot agree with his determination of penalty at 300% of the tax. In my view, and in the light of circumstances discussed above, while the penalty is to be imposed because the factum of concealment has been established beyond doubt, there are no circumstances that justify the imposition at the rate of 300% of the tax sought to be evaded.

In my opinion, all the surrounding factors should have been taken into cognisance by the AO at the time exercising his discretion in favour of imposition of maximum penalty. The AO has not done so. Therefore, in my considered view, while this is a fit case for imposition of penalty u/s 271 (1)c, neither the AO has led any evidence or reasoning, nor indeed the very fact and circumstances themselves warrant the imposition of penalty at the harshest level, which would cause unnecessary hardship to the present appellant. In view of the above discussions, while confirming the imposition of penalty, I restrict the quantum of penalty to 100% of the tax sought to be evaded.

In the result the appeal is partly allowed".

19. We find that the ld. 1st Appellate Authority has made a lucid analysis on the issues with all possible angles. The ld. CIT(Appeals) has relied upon the judgment of the Hon'ble Supreme Court in the case of Kehar Singh -vs.- State of Haryana [AIR 1988 SC 1889] and other judgments before holding that ends of justice would meet if penalty is to be imposed equivalent to the quantum of the tax sought to be evaded by the assessee. We do not find any reason to enhance this penalty. The ld. Assessing Officer failed to make out a case demonstrating the fact that penalty should be imposed @ 300%. On the other hand, ld. 1st Appellate Authority has exercised her discretion and restricted the levy of penalty @ 100%. This discretion has been exercised by a higher Appellate Authority reasonably. The 2nd Appellate Authority is not supposed to interfere in such a discretion unless compelling reasons are available to do so. Therefore, we do not find any justification to interfere in the order of ld. CIT(Appeals) in the penalty appeals of Tharur Bhaskaran. In view of the above, these appeals of the Revenue are also dismissed.

20. In the result, all the appeals of the Revenue are dismissed.

Order pronounced in the open Court on 05/06/2024.

Sd/-	Sd/-
(Sanjay Awasthi)	**(Rajpal Yadav)**
Accountant Member	**Vice-President (KZ)**

Kolkata, the 5th day of June, 2024

Copies to :(1) Deputy Commissioner of Income Tax, Central Circle-4(2), Kolkata,

(2) Nalini Bhaskaran, 16/2, Raja Santosh Road, New Alipore, Kolkata-700027

(3) Tharur Bhaskaran, 16/2, Raja Santosh Road, New Alipore, Kolkata-700027

(4) Commissioner of Income Tax (Appeals)-21, Kolkata;
(5) The Departmental Representative
(6) Guard File
TRUE COPY

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.