

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI PRASHANT MAHARISHI, ACCOUNTANT
MEMBER**

&

SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

**ITA No. 4840/MUM/2023
(Assessment Year : 2014-15)**

Rita Hemchand Gandhi Ayodhya Apartments, Flat no. 101 Ramgali, Kandivali West, Mumbai-400067.	V.	Income Tax Office INT Tax Ward 2(3)(1) 17 th Floor, Air India Building, Nariman Point, Mumbai-400021.
PAN/GIR No. AKEPG6370P		
(Appellant)	..	(Respondent)

Assessee by	Shri. Rajesh S. Shah
Revenue by	Smt. Mahita Nair (SR. DR.)
Date of Hearing	27/05/2024
Date of Pronouncement	25/07/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 08.11.2023 passed in Appeal no. CIT(A)56, Mumbai/10106/2013-14 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the

Assessment year [A.Y.] 2014-15, wherein the penalty of Rs. 1,52,084/- has been imposed upon the appellant assessee vide order dated 27.09.2022 passed by assessing officer u/s. 271(1)(C) of the Act.

2. The brief facts related to the appeal state that the appellant is a non resident Indian, settled in Dubai, UAE since the year 1978. During the assessment year A.Y.2014–15, the only source of appellant’s income was interest on investments. Appellant did not file her return of income for A.Y.2014–15 as per the provisions of Section 139 of the Act. The Appellant’s case was selected for scrutiny u/s. 147 of the Act. It was noted that the assessee had entered into transactions relating to TDS Return (Section 195) during the F.Y. 2013–14 relevant to A.Y. 2014–15. After taking necessary approval from the competent authority, the case was reopened and notice u/s. 148 of the Act was issued. Assessee responded and filled ITR on 24.04.2021, declaring income of Rs. 60,83,333/-. Assessing officer, vide assessment order dated 03.03.2022 (digitally signed on 30.03.2022), passed u/s. 143(3) r/w Section 147 of the Act, accepted the income declared by the assessee and computed the Income Tax, surcharge, education, and interest u/s. 234A, 234B, 234C & 234D of the Act. The proceeding u/s. 271(1)(C) of the Act was separately initiated, wherein, minimum penalty @100% of tax at Rs. 1,52,084/- , was levied. Aggrieved by the penalty order dated 27.09.2022, assessee preferred an appeal before learned CIT(A), who

dismissed assessee's appeal and confirmed the penalty order vide impugned order dated 08.11.2023.

3. Aggrieved by the impugned order dated 08.11.2023 passed by learned CIT(A), appellant assessee has preferred this appeal on the following grounds:

"1. On the facts and circumstances of the case, CIT(A) erred in confirming the Penalty levied u/s.271(1)(c) of the Act of Rs. 1,52,084.

2. a) On the facts and circumstances of the case, the AO erred in levying the penalty, though the AO has not specified under which limb the penalty proceedings were initiated in the notice issued u/s.271(1)(c) dated 30/03/2022. The penalty levied under such circumstances is bad in law.

b) It is well settled law that the penalty proceeding initiated without specifying the particular limb of the proceedings is bad in law.

3. a) On the facts and circumstances of the case and in law, the AO wrongly issued the notice u/s.271(1)(c) of the Act though no proceedings have been initiated in the assessment order. The AO is required to initiate the penalty proceedings in the assessment order.

b) The AO erred in issuing notice u/s.271(1)(c) on 30/03/2022 i.e. after the assessment order passed on 03.03.2022.

4. a) On the facts and circumstances of the case and in law, the assessment order passed u/s.147 is bad in law since order dated 03/03/2022 is digitally signed on 30/03/2022 and DIN was taken on unsigned order. It is not clear as to the date of taking DIN.

b) The penalty order passed u/s.271(1)(c) on the assessment order, which is bad in law, is void ab-initio.

5. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the penalty without considering detailed submission and judgements cited during the appeal proceedings. The order passed by the CIT(A) without considering the merits of the case is bad in law

6. a) On the facts and circumstances of the case and in law, there is no concealment of Particulars of Income as the full particulars of Income were available before the department in the Form 26AS and AIS.

b) The appellant submits that no addition has been made in the Return of Income filed, therefore, no penalty can be levied.

c) The AO erred in not considering several judicial pronouncements where in it has been held that bonafide mistakes do not constitute the concealment of Income.

7....."

4. In response to the notice issued by the tribunal, learned DR appeared and participated in the hearing.

5. We have perused the material on record and heard learned representatives for both the parties.
6. The main point for consideration, covering all grounds of appeal, is as to whether the penalty order dated 27.09.2022 is unsustainable under law?
7. It transpires from the perusal of records that the appellant assessee is non-resident Indian and did not file the return of income for the assessment year 2014-15. It is only in response to the notice dated 30.03.2021 issued u/s. 148 of the Act, the assessee filed her return of income on 24.04.2021, declaring her total income at Rs. 60,83,333/-. The same was accepted by the Assessing Officer vide assessment order dated 03.03.2022 (digitally signed on 30.03.2022). It is noted that the assessment order does not even whisper with regard to any direction for initiating penalty proceedings u/s. 271(1)(C) of the Act.
8. The statutory provisions under the Act, relevant to the case under consideration, read as under:

Section 115G

“115G. It shall not be necessary for a non-resident Indian to furnish under sub-section (1) of section 139 a return of his income if-
(a) his total income in respect of which he is assessable under this Act during the previous year consisted only of investment income or income by way of long-term capital gains or both; and
(b) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.”

Section 271

“ 271. (1) If the [Assessing Officer or [Joint Commissioner (Appeals) 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) has [*] failed to comply with a notice [under sub-section (2) of section 115WD or under sub-section (2) of section 115WE or] under sub-section (1) of section 142 or sub-section (2) of section 143 [or fails to comply with a direction issued under sub-section (2A) of section 142], or

(c) has concealed the particulars of his income or [***] furnished inaccurate particulars of [such incomes, or]

[(d) has concealed the particulars of the fringe benefits or furnished inaccurate particulars of such fringe benefits,]

he may direct that such person shall pay by way of penalty—

(i) [*]

[(ii) in the cases referred to in clause (b) in addition to tax, if any, payable by him, a sum of ten thousand rupees for each such failure.

(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 for fringe benefits].

[*].....”

Section 271(1B)

“[(1B) Where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment and the said order contains a direction for initiation of penalty proceedings under clause (c) of sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings under the said clause (c).]”

9. The assessee’s submissions dated 05.04.2022 made before the authorities below, are contained at page 4 of assessee’s paper book, the same are also the part of penalty order. The assessee had submitted that she was a Non Resident Indian(NRI) of 69 years of age, settled in Dubai, UAE since, 1978. She was in possession of tax residency certificate of UAE for the year under assessment. The source of income of the assessee during the assessment year, was interest on investments. She further submitted that as per DTAA between India & UAE, the tax was required to be deducted at source from interest income @12.5% but the deductor deducted tax at source on interest income @10% resulting in additional tax

of Rs. 1,52,084/-. She further submitted that after knowing the shortfall, she immediately paid the balance tax of Rs. 1,52,084/- along with interest of Rs. 2,57,944/- amounting to total of Rs. 41,10,028/-. She has further submitted that she was under a bonafide belief that tax would have been deducted properly and no additional tax would have been payable by her. The aforesaid factual submissions are not disputed by revenue.

10. Perusal of records show that the appellant assessee, being non-resident Indian, was not required to furnish return of income u/s. 139(1) of the Act, if TDS on her only income of interest on investment, was deducted @12.5% as against 10% as per said DTAA between India & UAE. The assessment order does neither contain any direction nor any satisfaction of the Assessing Officer for initiation of the penalty proceedings u/s. 271(1)(C) of the Act. The instant case is neither a case of concealment of income nor a case of furnishing of inaccurate particulars of income as the income declared by the assessee was accepted by the revenue. The submissions of the assessee, that she was under a bonafide belief that the tax at source was deducted properly and no additional tax was payable by her, being based on her legitimate expectation, deserves to be accepted. The penalty proceedings cannot thus be sustained under the law. The aforesaid point is thus determined in favour of the assessee and against the revenue.

11. In the result, the appeal is allowed. The impugned order dated 08.11.2023 is set aside and penalty order dated 27.09.2022 is quashed.

Order pronounced on 25.07.2024.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai; Dated 25/07/2024
Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai