

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member

I.T.A. No.683/Kol/2024
Assessment Year: 2014-15

Pramod Kumar Saraf.....Appellant
24, R. N Mukherjee Road,
Mission Row, Kol-1.
[PAN: APKPS6814F]

vs.

ITO, Ward-22(2), Kolkata..... Respondent

Appearances by:

Shri Sunil Surana, AR, appeared on behalf of the appellant.

Shri Manas Mondal, Addl. CIT- Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 26, 2024

Date of pronouncing the order : August 28, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 26.03.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has agitated against the levy/confirmation of penalty u/s 271(1)(c) of the Act.

3. The brief facts of the case are that the assessee had claimed long-term capital gains on account of sale of shares at Rs.7,10,447/-. During the assessment proceedings, the assessee produced relevant documents to substantiate his claim, however, the Assessing Officer held that as per the report received from the Investigation Wing, there was large scale price rigging of certain scrips, whereby, the bogus long-term

capital gains/losses have been claimed by various assessees. He relying upon the said investigation report, held that the long-term capital gains claimed by the assessee as bogus. The matter travelled up to the level of Hon'ble Jurisdictional High Court and the Hon'ble Jurisdictional High Court vide order dated 08.07.2022 passed in ITAT/35/2022 relying upon the decision in the lead case of 'PCIT vs. Swati Bajaj And Ors' reported in 2022 SCC Online Calcutta 1572 confirmed the addition made by the Assessing Officer observing that in the light of the report of the investigation wing, there were preponderance of probabilities of the long-term capital gains being claimed as bogus. The Assessing Officer also initiated penalty proceedings u/s 271(1)(c) of the Act and levied the impugned penalty.

4. Aggrieved by the aforesaid penalty levied by the Assessing Officer, the assessee preferred appeal before the Id. CIT(A), who confirmed the penalty so levied by the Assessing Officer. The assessee, thus, has come in appeal before us.

5. Before us, the Id. counsel for the assessee has submitted that, in this case, the assessee, during the assessment proceedings, had duly produced all the relevant evidences to prove the genuineness of the claim. That all the transactions were carried through recognised stock exchange. That nothing adverse was found against the assessee, however, the additions have been made on the basis of general report of the investigation wing. That the assessee was never allowed to cross-examine the alleged brokers who had made statement before the investigation wing that they were involved in the bogus transactions. That, even otherwise, the assessee was bona fide purchaser of the shares and the assessee has earned only small amount of long-term capital gains of Rs.7,10,447/-. Had the assessee any prior information

or intention to claim bogus long-term capital gains, the assessee would have claimed higher amount in this respect. He has further submitted that the revenue could not rebut any of the evidences furnished by the assessee to prove the transaction as bogus but the impugned addition was made solely on the basis of preponderance of probabilities. Under the circumstances, the ld. counsel has submitted that since it could not be proved that the assessee was actually involved in the bogus transaction, if any, therefore, merely because the additions have been made on the basis of preponderance of probabilities, the penal provisions to section 271(1)(c) of the Act were not attracted.

5.1 The ld. DR, on the other hand, has relied upon the findings of the lower authorities.

6. We have heard the rival contentions and gone through the record. The additions were made by the Assessing Officer and further confirmed by the CIT(A), however, the same were deleted by the Coordinate Bench of this Tribunal vide order dated 07.08.2019 passed in ITA No.2180/Kol/2018 observing that it was not proved by the department that the alleged transactions entered into by the assessee, were bogus. However, the Hon'ble High Court has confirmed the addition relying upon the report of the investigation wing and on account of preponderance of probabilities along with the lead case of PCIT vs. Swati Bajaj And Ors' (supra). It has been held time and again that matters relating to the assessment and penalty are different proceedings. So far as the matter relating to quantum additions made during the assessment proceedings is concerned, the same can be made on the basis of preponderance of probabilities, however, to attract the penal provisions of levy of penalty u/s 271(1)(c) of the Act, the stricter yardstick of culpability is required to be established. Considering the

overall facts and circumstances of the case and also considering that the assessee had claimed a small amount of long-term capital gains and under the circumstances, the possibility cannot be ruled out that the assessee might be a bona fide beneficiary of the long-term capital gains. Though the additions have been made/confirmed on the basis of preponderance of probabilities in this case, however, to establish the allegation of concealment of income/ furnishing of inaccurate particulars of income to invoke penal provisions of section 271(1)(c) of the Act, stricter proof is required, which, in our view, is missing in this case. Hence, giving the benefit of doubt, we are of the view that the assessee should not be burdened with penal consequences of provisions of section 271(1)(c) of the Act. In view of this, the impugned penalty levied/confirmed by the lower authorities is ordered to be deleted.

7. In the result, the appeal of the assessee stands allowed.

Kolkata, the 28th August, 2024.

Sd/-

[Sanjay Awasthi]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 28.08.2024.

RS

Copy of the order forwarded to:

1. Pramod Kumar Saraf
2. ITO, Ward-22(2), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches