

**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI**  
**BEFORE SHRI AMARJIT SINGH, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA No.4386/Mum/2023  
(Assessment Year: 2012-13)

Smt. Smita Ashok Thakkar 1 <sup>st</sup> Floor, Karimjee Building, Mahatma Gandhi Road, Mumbai-400 001	Vs.	DCIT, Central Circle 6(4) Room No. 1925, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400 021
PAN/GIR No. AABPT 2808 E		
<b>(Assessee)</b>	:	<b>(Respondent)</b>
<b>Assessee by</b>	:	Shri Rajesh P. Shah
<b>Respondent by</b>	:	Shri B. Laxmi Kanth
<b>Date of Hearing</b>	:	09.07.2024
<b>Date of Pronouncement</b>	:	07.10.2024

**ORDER**

**Per Kavitha Rajagopal, J M:**

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)-54, Mumbai ('Id.CIT(A) for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2012-13.

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

1. *On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in confirming the penalty levied by Assessing Officer u/s 271(1)(c) of Rs. 5,28,234/- which is bad in law.*
2. a) *On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in confirming the action of Assessing Officer of claiming that the penalty levied u/s 271(1)(c) in the assessment order is levied under both limbs i.e concealment of income and also for furnishing of inaccurate particulars which is bad in law without considering the fact that concealment and furnishing of inaccurate particulars cannot exist together.*
- b) *On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in confirming the action of Assessing Officer in imposing penalty of*

*Rs.5,28,234/- u/s 271(1)(c) being 100% of the amount of tax sought to be evaded on Rs. 17,09,498/- by reason of concealment of particulars and furnishing of inaccurate particulars of such income as mentioned in the penalty order without considering the fact that the jewellery found in the locker which is considered as unexplained belonged to the daughter of the assessee and hence there was neither any concealment of income nor furnishing of any inaccurate facts. Levy of penalty on the same is bad in law.*

3. Brief facts of the case are that the assessee had filed her return of income dated 24.01.2013 declaring total income at Rs.19,21,260/-. Pursuant to the search action carried out in the case of Thakkar Group dated 10.08.2011, where the assessee's case was selected for scrutiny under CASS and notices u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee. The learned Assessing Officer ('Id. A.O.' for short) had passed the assessment order dated 27.03.2014, declaring total income at Rs.55,08,510/- after making an addition of Rs.26,98,498/- and Rs.10,02,226/- (on protective basis) as 'unexplained jewellery' u/s. 69A of the Act found during search proceedings. The Id. A.O. also initiated penalty proceeding u/s. 271(1)(c) of the Act and vide order dated 23.03.2022 levied impugned penalty of Rs.5,28,234/- vide notice u/s. 274 r.w.s. u/s. 271(1)(c) of the Act dated 21.03.2014 for furnishing inaccurate particulars of income and concealment of income.

4. The assessee was in appeal before the first appellate authority, challenging the impugned penalty and the Id. CIT(A) vide order dated 22.11.2023, dismissed the appeal of the assessee on the ground that the assessee has failed to substantiate her claim.

5. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).

6. The learned Authorised Representative (Id. AR for short) for the assessee argued on the legal ground stating that the Id. A.O. had issued notice u/s. 274 r.w.s. 271 of the

Act, without striking out the irrelevant limb as to whether the penalty was levied for concealment of particulars of income or for furnishing inaccurate particulars of income.

The Id. AR relied on various decision in support of his contention.

7. The learned Departmental Representative (Id. DR for short), on the other hand, controverted the said facts stating that the assessee has failed to explain to the satisfaction of the Id. A.O. the source of the jewellery seized from the locker during the search. The Id. DR further contended that the Id. A.O. has rightly levied penalty and relied on the decision of the Hon'ble Jurisdictional High Court in the case of *Veena Estates Pvt. Ltd. vs. CIT* (in ITA No. 302 of 2002 vide order dated 11.01.2024).

8. We have heard the rival submissions and perused the materials available on record. It is observed that the Id. A.O. had levied the penalty for both furnishing of inaccurate particulars of income and concealment of income in the present case and the same is also substantiated by the impugned notice dated 21.03.2014 where the Id. A.O. has failed to strike out the irrelevant limb. The Id. AR has relied on the Full Bench decision of the Hon'ble Jurisdictional High Court in the case of *Mohammed Farhan A. Shaikh vs. CIT* [2021] 434 ITR 1 (Bom) which has held that the striking off the irrelevant limb is a mandatory condition or requirement to be followed by the Id. A.O. while issuing the penalty notice and the failure to do so would vitiate the said proceedings. The Id. DR, on the other hand, has relied on the decision of the Hon'ble Jurisdictional High Court in the case of *Veena Estates Pvt. Ltd.* (supra) in support of the Revenue's contention that the non striking of the irrelevant limb would not vitiate the penalty proceeding. On perusal of the decision cited by the Id. DR, it is observed that the Hon'ble High Court has held that

since the assessee has not raised this issue at an earlier point of time, pertaining to the defect in the notice, the same could not be a violation of principles of natural justice which plea was raised belatedly before the Hon'ble High Court for the first time and the same was not contended before the Id. A.O., the first appellate authority and even before the Tribunal. We are of the considered view that this decision relied upon by the Id.DR does not support the case of the Revenue as the facts are distinguishable for the reason that the assessee in the present case has raised the said plea even before the first appellate authority. Having said that, we are of the considered view that the assessee's case would be squarely covered by the full bench decision of the Hon'ble Jurisdictional High Court in *Mohammed Farhan A. Shaikh* (supra) where the non striking of the irrelevant limb would vitiate the penalty proceeding.

9. By respectfully following the said decision, we hereby allow ground no. 2(a) raised by the assessee and hold that the impugned notice issued by the Id. A.O. is null and void and, hence, direct the Id. A.O. to delete the impugned penalty.

10. As we have decided the issue on this ground, the other grounds of appeal raised by the assessee becomes academic in nature and requires no separate adjudication.

11. In the result, the appeal filed by the assessee is allowed.

*Order pronounced in the open court on 07.10.2024.*

Sd/-

(Amarjit Singh)  
Accountant Member

Mumbai; Dated : 07.10.2024  
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)  
Judicial Member

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai