



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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM

ITA No. 1008/MUM/2024	A.Y.2012-13
Late Batul Mohsin Roowala Through Legal Heir, C/o F/2, Palm Springs, 104 Cuffe Parade, Mumbai (Appellant)	Vs. ACIT, Circle 17(1), Mumbai (Respondent)
PAN	AHHPR 0003L
Assessee by Revenue by	None Shri Ashok Kumar Ambastha, Sr. (DR),
Date of hearing	31 st July, 2024
Date of pronouncement	08 th October 2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. ITA No. 1008/M/2024 is filed for Assessment Year 2012 – 13 by legal heir of late Batul Mohsin Roowala against the penalty order confirmed by the National Faceless Appeal Centre [NFAC], Delhi by appellate order dated 11/1/2024 wherein the appeal filed by the assessee against the penalty order dated 28/6/2019 passed under section 271 (1) (c) of the Income Tax Act, 1961 (hereinafter called the 'Act') amounting to Rs.



- 547,284/- levied by the learned Assessing Officer was confirmed. Therefore, the assessee is in appeal before us.
2. The briefly stated the facts of the case shows that assessee filed his return of income on 31/7/2012 at Rs.80,548,557/-. This return was not scrutinized and therefore it was reopened under section 147 of the act wherein it was found that assessee held a property having 7.41% share which was sold for Rs.981,470,813 but the assessee has disclosed the share at 7.14% in that property and therefore long-term capital gain was shown at Rs. 70,070,266/- against 7,27,26,987/-. The assessment was passed making the addition of Rs. 2,656,721 as long-term capital gain disclosed less on sale of jointly owned immovable property. Assessee did not challenge the quantum assessment order and therefore the Assessing Officer initiated the penalty proceedings for concealment of income. The assessee did not challenge the assessment order.
 3. In the penalty proceedings the assessee submitted that as soon as the notice under section 148 of the Act was received, the assessee realized her mistake and revised the return of income in response to notice for reopening of the assessment and offered the correct amount of tax. It was further stated that this is a clerical mistake happened due to writing 7.14% as share in the above property instead of 7.41%. The learned Assessing Officer disbelieved and rejected the explanation of the assessee and levied penalty under section 271 (1)(c) of the act of Rs. 547,284/- by penalty order dated 28/6/2019.
 4. Assessee approached the learned CIT – A the appeal was dismissed holding that assessee did not furnish all relevant facts necessary for correctly computing the income from capital



gains. Apart of the disclosure was wrong and such wrong was retracted by the Department first and then disclosed by the assessee. Therefore, it was admitted by the assessee that she has furnished incorrect details but defendants by saying that it was not wilful but merely clerical mistake. He confirmed the penalty holding that there was a furnishing of inaccurate particulars leading to concealment of income and therefore there was no infirmity in the order of the learned AO.

5. Assessee aggrieved with the same is in appeal before us. It was contested in grounds of appeal that assessee has passed away on 4/10/2011 and return of income for Assessment Year 2012 - 13 is filed by the legal heir of the assessee. And therefore, a penalty on that person is incorrect and invalid. We find that penalty orders have been passed on the executors of the estate of the diseased assessee. The assessment order was also passed on same status. Therefore, there is no infirmity so far as the order passed.
6. Despite notice none appeared on behalf of the assessee, therefore, in the absence of the assessee the appeal is decided on the merits of the issue.
7. The learned Departmental Representative vehemently supported the case of the learned lower authorities.
8. We find that the sole issue in this is that assessee has sold a property where her share was 7.41%. By mistake the share was taken at 7.14% and, therefore, it resulted into lower capital gain charged of Rs. 26,56,721/-. It is to be noted that assessee has offered a long-term capital gain of 7,00,70,266/- on above incorrect mentioning of a share. The correct capital gain is Rs. 72,726,987/-. This was owned by the assessee as



soon of the notice under section 148 of the income tax Act was received by the assessee and disclosed the additional capital gain of Rs. 2,656,721/-. We find that the above error has happened because of wrongly taking the share of the assessee at 7.14% instead of 7.41%. Looking to the amount of the capital gain offered by the assessee, the punching error of incorporating the right to share of the assessee, appreciating the fact that .41% would have been punched that .14% as a human error, which is bona fides, we do not find that penalty in this case should have been levied under section 271 (1)(c) of the Act.

9. Even otherwise in this case the penalty has been initiated by the learned assessing officer in the assessment order passed on 18/12/2018 stating that had the information not been received by the assessing officer from internal sources of the Department and the remedy elections would not have been initiated from this office, the income would have escaped assessment resulting in loss of revenue. Had the case not been reopened under section 147 of the Income Tax Act, this income would have escaped assessment. Therefore, penalty proceedings were initiated for concealment of income. The penalty orders were passed on 28/6/2019 wherein it was held in paragraph number 9 that assessee has furnished inaccurate particulars of its income and therefore penalty was levied. The learned CIT - A has also confirmed the penalty for furnishing inaccurate particulars of income. On reading of the assessment year, we do not find any satisfaction of the learned assessing officer holding that it is a case of furnishing of inaccurate particulars. The learned AO held that it is a concealment of income. Therefore, there is an inconsistency in recording



satisfaction for the levy of penalty, issuing show cause notice for the levy of penalty and further penalty order and the appellate order. Therefore, for such inconsistencies also the penalty cannot be sustained.

10. In the result we direct the learned assessing officer to delete the penalty of Rs. 547,287/- levied under section 271 (1) (c) of the act. The orders of the learned lower authorities are reversed.
11. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 08/10/2024.

Sd/-

(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 08.10.2024
Dragon

Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai