

2. The assessee is an individual and moved to Muscat since February 2016. For the AY 2010-11 the assessee did not file any return of income. The AO received information that the assessee has sold immovable property valued at Rs. 59,87,300/-. Accordingly, the AO issued a notice under section 148 and since the assessee did not respond to the notices issued by the AO completed the assessment under section 147 r.w.s. 144 of the Act by making an addition towards the entire value of the property. Aggrieved the assessee filed further appeal before the CIT(A) who dismissed the appeal rejecting the submissions made by the assessee. Subsequently the AO initiated penalty proceeding under section 271(1)(c) of the Act and the AO levied a penalty of Rs. 17,51,200/- for concealment of income on the part of the assessee. On further appeal, the CIT(A) confirmed the penalty levied by the AO.

3. There is a delay of 20 days in filing the appeal before the Tribunal. Having heard both the parties and perused the material on record, we are of the view that there is a reasonable and sufficient cause for the delay in filing the appeal before the Tribunal. Therefore following the Hon'ble Supreme Court decision in the case of Collector, Land Acquisition Vs. MST.Katiji & Ors., (167 ITR 471) (SC) we condone the delay of 20 days in filing the appeal and admit the appeal for adjudication.

4. We heard the parties and perused the material on record. During the course of hearing the ld. AR brought to our attention that the Co-ordinate Bench of the Tribunal while deciding the impugned addition in the quantum appeal has set-aside the issue back to the CIT(A) for consideration afresh on merits. Accordingly, the ld. AR prayed that the penalty confirmed by the CIT(A) is premature and does not survive. We in this regard notice that the Co-ordinate Bench while considering the

issue of addition made by the AO to the tune of Rs. 59,87,300/- in the quantum appeal held that –

“5. We heard the rival submissions perused the material on record. The sole matrix of the disputed issue envisaged by the Ld. AR that the CIT(A) has erred in confirming the action of the AO overlooking the written submissions filed along with evidences in support of acquisition of property with the Housing Loan sanctioned by the HDFC Ltd and bank payments from the assessee accounts. The contention of the Ld. AR that the assessee has purchased the property from Housing loan from HDFC Ltd and out of personal savings from salary income. We find the evidences play a important role in decision making in the adjudicating proceedings. Therefore considering the facts, circumstances and evidences, the assessee should not suffer for non filing of material information, as the evidences played vital role in decision making . Accordingly, to meet the ends of justice, we set aside the order of the CIT(A) and restore the entire disputed issues along with the evidences to the file of the assessing officer to decide afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information. And we allow the grounds of appeal of the assessee for statistical purposes.”

5. Since the Tribunal has remitted the issue back to the CIT(A) for fresh consideration on merits, the penalty levied by the AO under section 271(1)(c) of the Act for concealment of income arising out of the impugned addition is premature. Accordingly, we set aside the order of the CIT(A) confirming the levy of penalty under section 271(1)(c).

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 05-12-2024.

Sd/-
(SAKTIJIT DEY)
Vice President

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant

2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai