

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “B”, MUMBAI
BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 490/MUM/2024 (A.Y: 2012-13)**

DCIT-CC-4(2),

Room No. 1921, 19th floor, Air India
Building, Nariman Point, Mumbai-
400 021

(Appellant)

Vs. Shahrukh Khan,

44 Mannat, B.J. Road,
Bandstand, Bandra (West),
Mumbai-400 050

PAN: AAHPK3293L

(Respondent)

Assessee Represented by

**: Shri Ashok Kumar
Ambastha, Ld. dR**

Department Represented by

**: Shri Aditya Ajgaonkar,
Ld. AR**

Date of conclusion of Hearing

: 07.10.2024

Date of Pronouncement

: 27.11.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the revenue against the order of Learned Commissioner of Income Tax (Appeals) – 52, Mumbai [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] dated 03.11.2023 for the



A.Y. 2012-13, wherein the penalty imposed by DCIT Central Circle-4(2), Mumbai upon assessee was set aside.

2. The facts in brief are that, the assessee has e-filed his return of income for A.Y. 2012-13 on 29.09.2012 declaring total income of Rs. 83,42,22,630/-. The case was selected for scrutiny under CASS and the notice u/s 143(2) of the Act was issued. The AO vide assessment order dated 16.03.2015 made disallowance u/s 14A r.w.r. 8D for a sum of Rs. 36,89,168/- and further an addition was made on account of notional rental income from Dubai Palm Signature Villa to the tune of Rs. 56,40,190/-. Therefore, the penalty proceedings were initiated u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income and concealment of income.
3. Vide order dated 30.03.2018 passed u/s 271(1)(c) of the Act, the AO did not levy any penalty on account of disallowance u/s 14A of the Act, however he proceeded to impose the penalty on the concealment of notional income at Rs. 39,48,133/- from Signature Villa at Dubai. The assessee challenged the penalty order before the Ld. CIT(A) and the Ld. CIT(A) vide his order dated 03.11.2023 has deleted the penalty and allowed the appeal of the assessee.



4. Aggrieved by the impugned order, the department is in appeal before us raising the following ground:-

On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the penalty of Rs. 12,18,980/- without appreciating the fact that the conditions for levy of penalty u/s 271(1)(c) of the Act, 1961 are satisfied in this case.

5. Ld. AR submitted that Ld. CIT (A) has rightly deleted the penalty because the Coordinate Bench of ITAT in ITA No. 5767/Mum/2014 for AY 2010-11 in assessee's own case has deleted the penalty by observing that no penalty u/s 271(1)(c) of the Act was liable to be imposed. Ld. AR also relied on the order of Coordinate Bench of ITAT reported in (2019) 103 taxmann.com 252 (Mumbai-Trib) dated 08.03.2019 for AY 2009-10 in assessee's own case and the Coordinate Bench has set aside the order of penalty u/s 271(1)(c) of the Act and dismissed the appeal of revenue and it was observed:-

9. We have heard the rival submissions. We find that the co-ordinate Bench of this Tribunal in assessee's own case for the A.Y.2010-11, 194 TTJ 777 dated 22/05/2010 had deleted the penalty on the very same issue on the ground that the revenue had placed reliance on Notification Nos. 90 & 91 of 2008 dated 28/08/2008 and whether such notification would supersede over the DTAA, was a debatable issue and that the very same issue have



travelled up to the level of Tribunal in assessee's own case wherein the scope and gamut of the term "may be taxed in such other state" was subjected to heavy deliberations and debate. Since, the issue per se was debatable, this Tribunal in assessee's own case for the A.Y.2010-11 in the case referred to supra held that no concealment penalty u/s.271(1)(c) of the Act could be levied on a debatable Issue. Respectfully following the said decision in assessee's own case of this Tribunal referred to supra, we delete the penalty u/s.271(1)(c) of the Act and we find no infirmity in the order of the Ld. CIT(A) thereon. Accordingly, ground No.3 raised by the revenue is dismissed.

Therefore, Ld. AR vehemently argued on behalf of assessee that there is no illegality and perversity in the order passed by the Ld. CIT, hence the appeal of the revenue be dismissed.

6. Ld. DR on behalf of the revenue has submitted that the AO has rightly imposed the penalty and further argued that order of Ld. AO in the quantum appeal has been confirmed by the Ld. CIT (A) which has also not been challenged by the assessee, therefore the impugned order be set aside and the penalty levied by AO be restored.
7. We have considered the rival submissions. Section 271(1)(c) of the Act provides as under:

271. (1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person—



(a)

(b),or

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

(d)

Thus, for imposing the penalty, the following requirements is to be satisfied:-

- i) That the assessee has concealed the particulars of his income or
- ii) Assessee has furnished inaccurate particulars of such income.

8. Further, the revenue could not bring to our notice any material which may show that the observation of Ld. CIT (A) in para 6 of the impugned order are illegal or perverse which may warrant inference by the Tribunal for setting aside the impugned order. It is evident from the impugned order that the Ld. CIT (A) relied on the decision of Coordinate Bench of ITAT in ITA No. 5767/Mum/2014 in assessee's own case where the penalty on the same ground has been deleted and the case of revenue has been dismissed. The observation in para 6 to 6.6 of the order of Ld. CIT(A) are extracted below:-



6. Grounds No. 1 & 2 are interlinked and taken up together for adjudication.

6.1. I have considered the facts of the case. The appellant is stated to have been gifted a Signature Villa in UAE which was received by him on 08.06.2008. According to the appellant, this villa was self-occupied and that the asset was reflected in its books. The appellant relied on the Indo-UAE DTAA and contended that no notional income was liable to be taxed. According to the AO, since the appellant was entitled to treat only one property as self-occupied, deemed rental income was liable to be taxed although this is the second property. The AO has discussed the reasons for not accepting the contentions of the appellant in para 4 and other paras of his penalty order.

6.2. Before me, the appellant has orally contended that the that the issue was a recurring one. According to the appellant, although the additi dition on this issue for various years were confirmed by the then by the then CIT(A), the appellant has subsequently opted for VSVS TAC with an intention to settle the litigation. This was stated to be on account of further changes made in the law wherein two properties were allowed to be treated as self- occupied w.e.f. 01.04.2020.

6.3. In respect of AY 2010-11, the then CIT(A) had deleted the penalty. He had noted that ".....In fact, because of provisions of 'DTAA', two opinions were possible about taxability of this income. Further, the Hon'ble ITAT. Mumbai, in the case of Equest India (P.) Ltd. vs. ITO (136 TTJ 574), has held that the plain meaning of the expression 'furnishing of inaccurate particulars of income! Implies furnishing of details of income and this cannot be extended to areas which are subjective such as taxability of an income, admissibility of a deduction and interpretation of law. In the present case, whether income from appellant's property in Dubai is taxable in India or not, is a question of law.....".



6.4. Subsequently, the Hon'ble ITAT vide ITA No. 5767/Mum/2014 for AY 2010-11 dt. 21.05.2018 has held as follows: "...We thus are of the considered view that as the claim raised by the assessee was clearly backed by a bonafide belief on his part, that the notional income of the villa was not liable to be taxed in India, therefore, on the said count too no penalty under Sec. 271(1)(c) could have been validly imposed on the assessee.....".

6.5. Having considered the entire facts, I am of the view that the appellant is entitled to succeed in its case for the year under reference. It has been held by my Id. Predecessor and Hon'ble ITAT that the claim was raised by the appellant backed by his bonafide belief that the notional income was not liable to be taxed in India on account India-UAE DTAA. The penalty of Rs. 12,18,980/- stands DELETED.

6.6. Hence, Grounds No. 1 & 2 stand ALLOWED

9. We are of the considered view that Id. CIT (A) has rightly followed the decision of Coordinate Bench of ITAT. Our view is also fortified by the decision of the Hon'ble Allahabad High Court, **K. N. Agarwal Vs. Commissioner of Income Tax, order dated 11.01.1991, [1991] 189 ITR 769B (ALL)** which says, "Indeed, the orders of the Tribunal and the High Court are binding upon the Assessing Officer and since he acts in a quasi-judicial capacity, the discipline of such functioning demands that he should follow the decision of the Tribunal or the High Court, as the case may be. He cannot ignore it merely on the ground that the Tribunal's order is the subject-matter of revision in the High Court or



that the High Court's decision is under appeal before the Supreme Court. Permitting him to take such a view would introduce judicial indiscipline, which is not called for even in such cases.”

10. Thus in view of the above discussions and observations, we are of the considered opinion that the revenue has failed to satisfy that there was deliberate concealment of income or furnishing of inaccurate particulars of income by the assessee. Therefore, we confirm the order of Ld. CIT (A) and find no illegality in appreciation of facts or perversity in application of law in the impugned order and Ld. CIT(A) has rightly deleted the penalty imposed by the AO. Resultantly, all the grounds raised by the revenue are dismissed.

11. In the result, appeal filed by the revenue is **dismissed**.

Order pronounced in the open court on 27.11.2024

Sd/-

**(B R BASKARAN)
(ACCOUNTANT MEMBER)**

Mumbai / Dated 27.11.2024
Dhananjay, Sr.PS

Sd/-

**(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)**



Copy of the Order forwarded to:

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

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai