

IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

ITA No. 3505/MUM/2024

(Assessment Year : 2016-17)

Sanjay Kumar,

C/o Johnson and Johnson Pvt. Ltd.
501, Arena Spcaes, OFF JVLR Road,
Behind Majas Depot Jogeshwari East
Maharashtra
PAN: AAZPS9534Q

..... Appellant

v/s

Income Tax Officer (IT)- 4(2)(1),

Room No.1916, 19th Floor,
Air India Building, Nariman Point
Mumbai - 400021
Maharashtra

..... Respondent

Assessee by : Ms. Riddhi Jain

Revenue by : Shri Krishna Kumar (Sr.DR)

Date of Hearing - 05/12/2024

Date of Order - 30/12/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 13/05/2024, passed under section 250 of the Income Tax Act, 1961 ("the Act") by the learned Commissioner of Income Tax (Appeals)-58, Mumbai [*"learned CIT(A)"*], which in turn arose from the penalty order dated 28/06/2019 passed under section 271(1)(c) of the Act, for the Assessment Year 2016-17.

2. The only grounds taken by the above appellant is reproduced as follows:

"1 Re.: Levy of penalty of Rs, 1,89,887 under section 271(1)(c) of the Income Tax Act, 1961 (the Act):

1.1 The Commissioner of Income-tax (Appeals) has erred in upholding the penalty levied by the Assessing Officer u/s. 271(1)(c) of the Act on the Appellant.

1.2 The Appellant submits that considering the facts and circumstances of his case and the law prevailing on the subject, he has not furnished inaccurate particulars of income and hence no penalty whatsoever can be levied on him u/s. 271(1)(c) of the Act and the Commissioner of Income-tax (Appeals) ought to have held as such.

1.3 The Appellant submits that the impugned Order levying penalty u/s. 271(1)(c) of the Act be struck down."

3. The brief facts of the case are :

(a) The appellant filed return of income declaring a total income of Rs.5,65,84,870/- During the course of scrutiny proceedings, the appellant submitted a revised computation offering dividend income of Rs.6,14,521/-, a foreign dividend income from Johnson & Johnson (P) Ltd. as the same was not included in the total income. The appellant filed a revised return of income also to this extent. The Id. AO completed the assessment by accepting the revised computation / revised return of income filed by appellant. While completing the scrutiny assessment, the Id. AO initiated penalty under section 271(1)(c) of the Act for filing inaccurate particulars of income. There is no appeal on assessment as there is no variation between the revised return of income and assessment under section 143(3) of the Act.

(b) The Ld. AO levied penalty by invoking Explanation-1 to Section 271(1)(c) of the Act to the extent of Rs.1,89,887/-, being 100% of tax

sought to be evaded on dividend income offered during scrutiny assessment and passed the penalty order.

4. The appellant filed an appeal on this penalty order of Ld. AO and it was argued that penalty cannot be levied on the addition made, because he voluntarily admitted the additional income and there is no difference between the revised return of income and the assessment completed. The Ld. CIT(A) confirmed the order of penalty by relying on the decision of Hon'ble Supreme Court's order of Mak Data (P) Ltd., 38 Taxman.com 448 (SC).

5. Aggrieved by the orders of Ld. AO and Ld. CIT(A), the appellant filed an appeal before ITAT with the grounds of appeal mentioned in page 1 of this order.

6. The Ld. AR of appellant has argued before the Bench that inaccurate particulars of income were not furnished by the appellant and he has fully co-operated with the Ld. AO during the assessment proceedings by filing all required particulars. The mistake pointed out by Ld. AO was immediately rectified, a revised computation of income / revised return of income were also filed. There is no difference between revised computation / revised return of income filed by appellant and the figure arrived by Ld. AO while completing the scrutiny assessment. It was also argued that the status of appellant was Resident but not Ordinarily Resident and this is the first year, the appellant became resident. Moreover, the dividend income was not credited into the bank account. The concerned broker of shares has reinvested the dividend received in the shares. Further, the dividend tax was also taxed in USA,

Foreign tax credit / relief under section 90 of the Act is available to the extent of Rs.1,53,630/- and the additional tax payable / paid by him is a meagre amount of Rs.59,043/- whereas his returned income is more than Rs.5.65 crore. As the difference is negligible, penalty may be deleted, it was argued.

7. The Ld. DR has relied on the orders of lower authorities, especially the order of Ld. CIT(A) who relied on the case of Mak Data (P) Ltd. of Hon'ble Supreme Court (supra) and pleaded that the penalty levied by Ld. AO may be confirmed.

8. Heard both sides and perused the various case law cited by them. It is observed that the case law by both the parties are not applicable to the facts of this case. What is to be seen is not just the case of text, but also context of the case. In none of the cases cited by both the parties, the appellant is having the status of Resident but not Ordinarily Resident, the tax was not deducted in another country, nor the appellant immediately accepted the mistake. The Ld. CIT(A) placed heavy reliance on the case of Mak Data (P) Ltd. of Hon'ble Supreme Court while confirming the penalty levied by Ld. AO. While analysing the facts of this case, it is observed that the facts are completely different from the impugned case. In Mak Data (P) Ltd., there was a survey operation conducted by Income Tax Department under section 133A of the Act on the sister concern of appellant and based on the incriminating material found during survey operation, the assessee filed a return of income after 10 months admitting the relevant incomes and in such facts and circumstances, Hon'ble Supreme Court has confirmed penalty. But, in the impugned case, there is a foreign tax credit, the appellant immediately

admitted the mistake, the appellant's status is Resident but not Ordinarily Resident with huge taxable income of Rs.5.65 crore and additional income on which penalty levied is a meagre amount of Rs.0.56 lakh. Moreover, there is no action by the Department like survey operation under section 133A of the Act. As the facts are entirely different, the reliance placed by Ld. CIT(A) on the case of Mak Data (P) Ltd. while confirming penalty, is misplaced and hence not correct.

9. As mentioned above, the appellant has accepted the mistake and there is Foreign Tax Credit available to appellant. Hence, the penalty levied by Ld. AO is deleted.

10. In the result, the appeal of appellant is allowed.

Order pronounced in the open Court on 30/12/2024

Sd/-

**NARENDER KUMAR CHOUDHRY
JUDICIAL MEMBER**

MUMBAI, DATED: 30/12/2024

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Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Sd/-

**OMKARESHWAR CHIDARA
ACCOUNTANT MEMBER**

By Order

Assistant Registrar
ITAT, Mumbai