

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

**BEFORE JUSTICE (RETD.) C.V. BHADANG, PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA NO. 3484/MUM/2015 : **A.Y : 2010-11**

Mr. Kaleem M. Khan
A-701, Ghanashyam Bhawan,
Plot no. 10, Sector – 3,
Ghansoli, Navi Mumbai 400 701.
PAN : APSPK7646H (Appellant)

Vs. Income Tax Officer,
Ward-22(3)(2), Mumbai.
(Respondent)

Appellant by : **Shri Devendra Jain**
Respondent by : **Ms. Monika H. Pande**

Date of Hearing : **21/01/2025**
Date of Pronouncement : **21/01/2025**

ORDER

PER JUSTICE (RETD.) C.V. BHADANG, PRESIDENT :

By this appeal, the assessee is challenging the concurrent orders passed by the authorities below, confirming levy of penalty under Section 271(1)(c) of the Income Tax Act, 1961 ('Act' for short) purportedly on the ground, that the appellant-assessee has furnished 'inaccurate particulars of income'.

2. We have heard the learned counsel for parties. Perused record.

3. It transpired during the course of hearing that the Assessing Officer (AO) had found that the assessee had failed to furnish details of Long Term Capital Gains (LTCG) which the assessee had earned during the year under consideration. The case was taken up for scrutiny in which the appellant offered the said LTCG. The Assessing Officer

subsequently initiated proceedings for levy of penalty which has given rise to the present appeal.

4. The learned counsel for the appellant has placed reliance on the decision of Supreme Court in *Commissioner of Income Tax (LTU) vs State Bank of India*, [2024] 169 *taxmann.com* 305 (SC) as well as the decision of Bombay High Court in *Principal Commissioner of Income Tax (Central), Bengaluru vs Goa Coastal Resorts and Recreation (P.) Ltd.*, [2020] 113 *taxmann.com* 574 (Bombay) in order to submit that the notice which was issued in this case did not specifically mention the ground on which the penalty was proposed to be imposed. It is pointed out that the relevant provision contemplates levying of penalty both on account of assessee having concealed the particulars of income or having furnished inaccurate particulars of such income. The learned counsel has referred to a copy of the notice dated 04.03.2013 in order to point out that the Assessing Officer has not struck off or deleted the inapplicable portion.

5. The learned DR has submitted that the Assessing Officer was clear in his opinion as to the ground on which he is proceeding, viz. appellant having furnished inaccurate particulars of income and, in that view of the matter, the order imposing penalty deserves to be sustained.

6. We have considered the submissions made. The issue is no longer *res integra* as it is covered by the decision of jurisdictional High Court in *Mohd. Farhan A. Shaikh vs CIT*, [2021] 434 *ITR 1 (Bom.)* as well as the decision of Supreme Court in *State Bank of India (supra)*. It has been, inter alia, held that non-striking of inapplicable limb would vitiate the order imposing penalty. A co-ordinate Bench of the Tribunal in *Lyka Labs Ltd. vs DCIT* in ITA No. 1415 to 1417/Mum/2024 decided on 06.06.2024 placing reliance on the aforesaid decision had taken a similar view.

7. In that view of the matter, we find that the impugned order cannot be sustained. The appeal is accordingly allowed. The Assessing Officer is directed to delete the penalty. The appeal is disposed of in the aforesaid terms.

Order pronounced in the open court on 21st January, 2025.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Mumbai; Dated : 21/01/2025

SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai