

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

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 5136/MUM/2024
Assessment Year: 2002-2003**

**ITA No.5134/Mum/2024
Assessment Year: 2003-2004**

**ITA No.5132/Mum/2024
Assessment Year: 2006-2007**

**ITA No.5131/Mum/2024
Assessment Year: 2007-2008**

&

**ITA No.5120/Mum/2024
Assessment Year: 2009-2010**

**ITA No.5129/Mum/2024
Assessment Year: 2011-2012**

Deputy Commissioner of Income Tax

41(1)(1), Mumbai

Room No.828, 8th Floor,
Kautilya Bhavan,
Bandra Kurla Complex,
Bandra (East), Mumbai-400051,
Maharashtra

..... **Appellant**
Vs.

Satya Kim Yashpal

101 Palm Beach Building,
Gandhigram Road, Juhu,
Mumbai – 400049, Maharashtra.
[PAN:AAF PY8166N]

..... **Respondent**

&

**C.O.No.265/MUM/2024
Assessment Year: 2002-2003**

**C.O.No.266/MUM/2024
Assessment Year: 2003-2004**

**C.O.No.264/Mum/2024
Assessment Year: 2006-2007**

**C.O. No.268/Mum/2024
Assessment Year: 2007-2008**

&

**C.O.No.263/Mum/2024
Assessment Year: 2009-2010**

**C.O. No.262/Mum/2024
Assessment Year: 2011-2012**

Satya Kim Yashpal

101 Palm Beach Building, Gandhigram Road, Juhu,
Mumbai – 400049, Maharashtra.
[PAN:AAFYPY8166N]

..... **Appellant**
Vs.

Deputy Commissioner of Income

Tax 41(1)(1), Mumbai

Room No.828, 8th Floor,
Kautilya Bhavan,
Bandra Kurla Complex,
Bandra (East),
Mumbai-400051, Maharashtra

..... **Respondent**

Appearance

For the Appellant/Assessee : None
For the Respondent/Department : Dr. Kishor Dhule; Shri Bhangepatil
Pushkaraj Ramesh

Date

Conclusion of hearing : 12.03.2025
Pronouncement of order : 29.04.2025

ORDER

Per Bench:

1. These appeals and cross-objections from part of batch of matters which were heard together. The present appeals and cross-objections arise from six separate orders of National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the '**CIT(A)**'], passed under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as '**the Act**'], whereby the Ld. CIT(A) had deleted penalty levied under Section 271(1)(c) of the Act for the Assessment Years 2002-2003, 2003-2004, 2006-2007, 2007-2008, 2009-2010 and 2011-2012. Therefore, the same are being disposed off by way of a common order.
2. When the appeals/cross-objections were taken up for hearing none was present on behalf of the Assessee. We have heard the

Learned Departmental Representative and have perused the material on record including the orders is passed by authorities below and documents/orders furnished by the Learned Departmental Representative vide Letter, dated 03/03/2025, in compliance with the directions issued by this Tribunal.

3. On perusal of material on record following facts emerge:
 - 3.1. The Assessee in the present case is the daughter of Mr. Jaswant Singh Yashpal [hereinafter referred to as 'JSY'] and Mrs. Blodwen Yashpal. JSY was Person of Indian origin having British nationality. JSY worked as a pilot/flight engineer with the airlines outside India. After working with Kuwait Airlines for more than 25 years, JSY retired in the year 1993 and decided to live in United Kingdom before returning to India in the year 2001. JSY expired on 28/06/2017.
 - 3.2. Mrs. Blodwen Yashpal [hereinafter referred to as 'BSY'] is a British national was married to JSY. She was a housewife having no source of income. BSY is stated to be around 92 years of age.
 - 3.3. The Assessee was cine artist resident in India and had been filing return of income in India on a regular basis. The Assessee is stated to be around 62 years of age.
 - 3.4. It is admitted position that JSY had maintained a bank account with HSBC, Geneva [hereinafter referred to as the '**Foreign Bank Account**']. The family has taken a consistent stand that name of BSY and the Assessee were included in the Foreign Bank Account as second and third signatory, respectively, on account of administrative convenience on the basis of legal advice received.

3.5. On the basis of information received by the Revenue about the existence of the Foreign Account, reassessment proceedings were initiated in the case of JSY, BSY and Assessee for the relevant assessment years. The reassessment proceedings culminated into passing of the assessment orders under Section 143(3)/147 of the Act. Penalty under Section 271(1)(c) of the Act was also levied in respect of additions made.

3.6. The present batch of appeals/Cross objections pertains to the following penalty orders passed in the case of the Assessee:

| Appeal No. | Assessment Year (Impugned Order Dated) | Penalty Order Dated | Particulars | Amount (INR) |
|-----------------------|---|---------------------|---|--------------------------------------|
| 5136/ MUM/ 2024 | 2002-2003 (11/07/2024) | 26/08/2015 | Income sought to be evaded - Interest : 3,54,910 + 13,776 Penalty levied @ 300% of tax | : 3,68,686/- : 2,58,900/- |
| 5134/ MUM/ 2024 | 2003-2004 (11/07/2024) | 29/07/2015 | Income sought to be evaded - Interest : INR.2,82,340 Penalty levied @ 300% of tax | : 2,82,340/- : 1,92,300/- |
| 5132/ MUM/ 2024 | 2006-2007 (11/07/2024) | 29/07/2015 | Income sought to be evaded - Unexplained Credit: 6,25,507 - Interest : 1,33,863 Penalty levied @ 300% of tax | : 7,59,370/- : 5,33,400/- |
| 5131/ MUM/ 2024 | 2007-2008 (11/07/2024) | 29/07/2015 | Income sought to be evaded - Unexplained Credit: 4,23,598 Penalty levied @ 300% of tax | : 4,23,598/- : 2,32,500/- |
| 5120/ MUM/ 2024 | 2009-2010 (11/07/2024) | 26/08/2015 | Income sought to be evaded - Interest : 18,63,642 Penalty levied @ 300% of tax | : 18,63,642/- : 15,69,165/- |
| 5129/ MUM/ 2024 | 2011-2012 (11/07/2024) | 26/08/2015 | Income sought to be evaded - Interest : 14,04,524 + 7,903 Penalty levied @ 300% of tax | : 14,12,427/- : 8,36,700/- |

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|------|--|--|--|---|--|
| 2024 | | | | : | |
|------|--|--|--|---|--|

- 3.7. In appeal preferred by the Assessee, against the above penalty order, the CIT(A) granted relief to the Assessee by deleting the penalty levied.
- 3.8. Being aggrieved by the above relief granted by the CIT(A), the Revenue has preferred the present appeals before this Tribunal. The Assessee has filed Cross-objections supporting the order passed by the CIT(A).
- 3.9. Identical grounds have been raised by the Revenue in all the appeals and the same reads as under:

- "1. *Whether in facts and circumstances of this case the Ld. CIT(A) has erred in allowing the appeal of the assessee without appreciating the fact that the assessee has not submitted any corroborating evidence in support of her contention which can bring out the true nature of the deposits made in the Foreign Bank Account.*
2. *Whether in facts and circumstances of this case the Ld. CIT(A) has erred in acknowledging the fact that the AO has passed a speaking order based on facts and documents furnished by the assessee, whereas the Ld. CIT(A) is of view that the assessment done is protective in nature.*
3. *Whether in facts and circumstances of this case the Id. CIT(A) has erred in relying upon the judgment of Hon'ble Supreme Court of India in case of Lalji Haridas vs ITO, Supreme Court, 1961 43 ITR 387 SC wherein the facts and circumstances have no resemblance with the instant case.*
4. *Whether in facts and circumstances of this case the Ld. CIT(A) has erred in allowing the appeal of the assessee by already presuming that the deposits pertains to the father of the Assessee, without providing a chance to AD by the way of calling remand report, if any additional evidences*

were produced before the appellate authority.”

3.10. The Assessee has also raised identical cross-objections which read as under:

- "1. On the facts and circumstances of the case and in law, order u/s143(3) rws. 147 dt. 30-03-2015 is bad in law because the AO himself accepted the fact that the amount has already been offered and assessed in the hands of assessee's father, same was added again and assessed again in the hands of the assessee on protective basis; assessment made u/s143(3) rws. 147 is bad in law and is liable to be quashed.*
- 2. On the facts and circumstances of the case and in law, order u/s143(3) rws. 147 dt. 30-03-2015 is bad in law because it did not take into consideration that the said income has been charged to tax in the hands of the father of the assessee; assessment made u/s143(3) rws. 147 is bad in law and is liable to be quashed.*
- 3. On the facts and circumstances of the case and in law, levying protective penalty is invalid, bad in law and is liable to be quashed.*
- 4. On the facts and circumstances of the case and in law, filing appeal to Hon'ble Tribunal when the tax effect in the given case is much lower than the monetary threshold as specified in CBDT Circular No.09/2024 dated 17th September 2024; is bad in law and is liable to be quashed.”*

3.11. We would take Assessment Year 2002-2003 as lead year for the purpose of the present appeals and Cross objections.

Assessment Year 2002-2003
ITA No. 5136/MUM/2024 & C.O. No.265/Mum/2024

4. The present appeal preferred by the Revenue and Cross Objection by the Assessee arise from order, dated 11/07/2024, passed by the CIT(A) under Section 250 of the Act whereby the Ld. CIT(A) had allowed the appeal of the Assessee against the Penalty Order, dated 26/08/2015, and deleted penalty levied under Section 271(1)(c) of the Act for the Assessment Year

2002-2003.

4.1. The relevant facts in brief are that vide Assessment Order, dated 30/03/2015, the Assessing Officer completed assessment for the Assessment Year 2002-2003 under Section 143(3) read with Section 147 of the Act at assessed income of INR.3,68,686/- by making addition of interest income of INR.3,54,910/- reflected in Foreign Bank Account and interest income of INR.13,776/- in respect of interest income from Standard Chartered Bank, Fort, Mumbai. Penalty proceeding under Section 271(1)(c) of the Act were initiated and penalty of INR.2,58,900/- was levied under Section 271(1)(c) of the Act. The said penalty was deleted by the CIT(A) vide order dated 11/07/2024, impugned by way of present appeal by the Revenue.

5. On perusal of material on record, we find that while passing the Assessment Order dated 30/05/2015 under Section 143(3) read with Section 147 of the Act, the Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act after recording as under:

"6.3. The statement of the aforesaid HSBC Bank account during the assessment year 2002-03 shows the following transactions:

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*From the aforesaid statement it is found that the interest of GBP 5234.47 was earned by the assessee in the joint bank account with father Shri Yashpal Jaswant Singh and mother Ms Yashpal Blodwen The amount in INR comes to Rs. i.e. Rs. 3,54,910/-. **The aforesaid amount has already been offered and assessed in the hands of her father Shri Yashpal Jaswant Singh, PAN: ACNPY1988J for the assessment year under consideration.** However, since the assessee is a joint account holder and equal beneficiary of the bank account,*

*to protect the interest of the revenue, the income earned from this HSBC account of Rs. 3,54,910/- during A Y 2002-03 is added to the total income of the assessee, **on protective basis.** (Add: Rs. 3,54,910/-)*

Penalty proceedings u/s 271(1)(c) are initiated for concealment furnishing inaccurate particulars of income" (Emphasis Supplied)

6. On perusal of above, it is clear that the Assessing Officer had recorded that the income of INR.3,54,910/- was offered to tax as well as assessed in the hand of JSY - father of the Assessee and therefore, the same income is being assessed in the hand of the Assessee on a protective basis.
7. On perusal of the Penalty Order, dated 26/08/2015, passed under Section 271(1)(c) of the Act, we find that the penalty has been levied in respect of the above interest income of INR.3,54,910/- reflected in the Foreign Bank Account and interest income of INR.13,776/- credited to the bank account maintained by the Assessee with Standard Chartered Bank, Fort, Mumbai. Thus, in respect of the aforesaid income an aggregate penalty of INR.2,58,900/- was levied under Section 271(1)(c) of the Act on Assessee computed @ 300% of the tax sought to be evaded.
8. In appeal preferred by the Assessee, the learned CIT(A) deleted the penalty observing that there can be no protective levy of penalty. We find that while holding as aforesaid the learned CIT(A) has placed reliance on the judgment of the Hon'ble Gujarat High Court in the case of **Bhailal Manilal Patel Vs. Commissioner of Income Tax/[2015] 232 Taxman 483 (Gujarat)[23-06-2014] (Gujarat)**, dated 23/06/2014, wherein it was held as under:

"5.6 Under the circumstances, unless and until the substantive assessment is made and final assessment order is passed in case of the assessee adding the income in the hands of the assessee, even the initiation of the penalty proceedings are not permissible. There cannot be any initiation of the penalty proceedings with respect to the protective assessment order. The aforesaid is supported by the decision of this Court in the case of Bankim J. Shah (Supra). In the said case also penalty was sought to be levied under Section 271(1) of the Act on the protective assessment and to that it is held that there cannot be any protective initiation of the penalty proceedings. It is further observed and held that in a given case a particular income belong to A or B and although the Income Tax Officer reaches to the conclusion that the said income belongs to one of them, he may make protective assessment on the other hearing regard to the fact that the matter was likely to be carried in appeal. It is observed that such a protective assessment may be permissible under the law but there cannot be protective initiation of the penalty proceedings. It is further observed that as such the basis or foundation for initiation of the penalty proceedings is the requisite satisfaction as provided in Section 271(1) of the Act and as such satisfaction could not be reached when the Income Tax Officer himself believes that the income for which the assessee is charged for concealment or furnishing of inaccurate particulars does not belong to him and he is assessed only as a protective measure."
(Emphasis Supplied)

9. Similarly, the Hon'ble High Court of Calcutta has, in the case of **Commissioner of Income Tax Vs. Super Steel (Sales) Co. [1989] 178 ITR 451 (Calcutta)[21-12-1988]**, held as under:

"3. *It appears that in this case the assessment was made on protective basis and for the last several years, the income had actually been assessed in the hands of one Mahabir Prasad Modi and not in the hands of the assessee. There can be a protective assessment but there cannot be any protective penalty. Before any penalty can be levied, the income has to be assessed as concealed income in the assessment of an assessee. Thereafter, in penalty proceedings, the competent authority has to probe into and decide whether there has been any concealment of income. But where there is a dispute as to whether such income allegedly concealed would be assessed in the hands of X or Y, unless the determination is made by the ITO, no charge of concealment can be made against the person in whose hands the income is added on protective basis. He is liable only if it is his income which has been concealed. In other words, only a person upon whom a substantive assessment is made would be liable for penalty provided the conditions precedent for imposition of the penalty are satisfied. It has been stated by the counsel for the revenue that the Department did not dispute the assessments made in the hands of the said Mahabir Prasad Modi. In either view of the matter, no penalty can be levied in this case.*
(Emphasis Supplied)

10. In the above judgments, the Hon'ble High Courts have concluded that there cannot be protective initiation/levy of penalty in case where addition is made on protective basis. It has been observed that the charge of concealment or furnishing inaccurate particulars of income can be made against a person in whose hands income taxed on substantive basis. To same effect is the decision of the Co-ordinate Bench of the Tribunal in the case of **Abhay Kumar Vs Assistant Commissioner of Income Tax: [1997] 63 ITD 15 (PAT.) (TM)** and **Gregory & Nicholas Vs.**

Assistant Commissioner of Income Tax: ITA No.5102/Mum/2006 [A.Y.2002-03, Dated 07/01/2011] *[relied upon by the Learned CIT(A)].*

11. We further note that in the present case the Revenue has not disputed the position that the income of INR.3,54,910/- was taxed in the hands of the father of the Assessee (JSY) and that penalty under Section 271(1)(c) of the Act has also been levied in respect of the same. Therefore, in the facts and circumstances of the present case penalty levied under Section 271(1)(c) of the Act in respect of interest income of INR.3,54,910/- pertaining to the Foreign Bank Account *[added in hands of the Assessee on a protective basis]* could not have been sustained and was, therefore, rightly deleted by the CIT(A).
12. As regards, interest income of INR.13,776/-, being interest income from Standard Chartered Bank, Fort, Mumbai, is concerned we find that no finding has been returned by the CIT(A). However, we have already noted that the Revenue has disputed that the above interest income of INR.3,54,910/- has been brought to tax in the hands of the father of the Assessee. In case the same is excluded, the interest income of INR.13,776/- would fall below that taxable limit leading to no adverse tax impact. Therefore, the question of levy of penalty under Section 271(1)(c) of the Act would not arise.
13. In view of above, concurring with the conclusion drawn by the CIT(A), we confirm the deletion of penalty of INR.2,58,900/- levied by the Assessee under Section 271(1)(c) of the Act. Therefore, all the grounds raised by the Revenue in the present appeal are dismissed. In view of the aforesaid, the cross-objection raised by the Assessee are also dismissed as

having been rendered infructuous.

14. In result appeal preferred by the Revenue [ITA No. 5136/MUM/2024] as well as the Cross Objection raised by the Assessee [CO. No. 265/MUM/2024] are dismissed as having been rendered infructuous.

Assessment Year 2003-2004

ITA No. 5134/MUM/2024 & C.O. No.266/Mum/2024

Assessment Year 2006-2007

ITA No. 5132/MUM/2024 & C.O. No.264/Mum/2024

Assessment Year 2007-2008

ITA No. 5131/MUM/2024 & C.O. No.268/Mum/2024

Assessment Year 2009-2010

ITA No. 5120/MUM/2024 & C.O. No.263/Mum/2024

Assessment Year 2011-2012

ITA No. 5129/MUM/2024 & C.O. No.262/Mum/2024

15. On perusal of material on record, We find that in identical facts and circumstances, additions were made on protective basis in the hands of the Assessee in the Assessment Orders for the Assessment Year 2003-2004, 2006-2007, 2007-2008, 2009-2010 & 2011-2012 in respect of amount/income reflected in the Foreign Bank Account for the relevant period and penalty under Section 271(1)(c) of the Act was levied in respect of such additions. Therefore, our finding/adjudication in relation to appeal/cross objects for the Assessment Year 2002-2003 shall apply mutatis mutandis to the present appeals/cross-objections. Accordingly, in view of paragraph 8 to 11 above, concurring with the view taken by the CIT(A), we confirm the deletion of penalty levied under Section 271(1)(c) of the Act in the case of the Assessee and decline to interfere with the same. Accordingly, the appeals preferred by the Revenue along with corresponding

cross-objections filed by the Assessee for the (i) Assessment Year 2003-2004 (ITA No. 5134/Mum/2024 & CO No.266/Mum/2024 (ii) Assessment Year 2006-2007 (ITA No. 5132/Mum/2024 & CO No.264/Mum/2024) (iii) Assessment Year 2007-2008 (ITA No. 5131/Mum/2024 & CO No.268/Mum/2024), (iv) Assessment Year 2009-2010 (ITA No. 5120/Mum/2024 & CO No.263/Mum/2024 and Assessment Year 2011-2012 (ITA No. 5129/Mum/2024 & CO No.262/Mum/2024)are dismissed.

16. In conclusion all the appeals preferred by the Revenue and Cross-Objections preferred by the Assessee are dismissed.

Order pronounced on 29.04.2025.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.04.2025
Milan, LDC

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त/ The CIT
4. प्रधान आयकर आयुक्त/ Pr.CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT,
Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार /(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai