



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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

ITA NO. 1241/MUM/2022 : A.Y : 2006-07

Dy. Commissioner of Income Tax,
Central Circle – 1(2),
Mumbai (Appellant) Vs. Milan Kavin Parikh
15A, J Mehta Road, Next to
Khatau Condominium,
Nepean Sea Road,
Mumbai 400 006. (Respondent)
PAN : AADPP0814G

Appellant by : Mahita Nair

Respondent by : None

Date of Hearing : 29/06/2022

Date of Pronouncement : 29/06/2022

ORDER

PER AMIT SHUKLA, JM :

The aforesaid appeal has been filed by the Revenue against impugned order dated 15.11.2021 for Assessment Year 2006-07 passed by learned Commissioner of Income Tax (Appeals)-47, Mumbai (in short 'Id. CIT(A)') in relation to penalty proceedings under Section 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act'). Revenue is aggrieved by deletion of penalty of Rs.9,42,29,730/-.

2. Facts in brief as culled out from the appellate order is as under :

2.1 The appellant Mr. Milan Kavin Parekh is a director in Mahendra Brothers Exports Pvt. Ltd, a company engaged in processing and export of

diamonds. In this case, specific information (hereinafter called as Base Note) was received from the French Government, under DTAA (Double Taxation Avoidance Agreement) that the present assessee was a beneficial owner of undisclosed overseas bank accounts in the names of the companies Sulay Trading Ltd and Laptis Trading Ltd with HSBC Bank, Geneva. Therefore a search and seizure action u/s.132(1) of the Act was conducted in the case of Mahendra Brothers Exports Pvt. Ltd. and other group concerns and directors including the appellant on 08.08.2011 by the DDIT (Inv.), Unit IX(3), Mumbai after receipt of information of undisclosed overseas HSBC accounts. The assessee being director in Mahindra Brothers Exports Ltd, a company engaged in processing & polishing of rough diamonds and its export. At the time of search, the assessee was shown "Base Note" as received from the French Authorities containing information about HSBC, Geneva, accounts and assessee being beneficial owner of such accounts. However, the assessee denied being beneficial owner of such accounts. A few days later the assessee produced a letter from HSBC Geneva, wherein it was stated that the assessee had no bank accounts in HSBC Geneva and that he had no transactions with the bank. Thereafter the Addl. DIT(inv.) Mumbai wrote a letter to HSBC, Geneva to verify whether they had indeed issued communication, presented by the assessee and also seeking information about the assessee being beneficial owner in respect of accounts in name of Laptis Trading Ltd., Sulay Trading Ltd etc.. But the HSBC refused to divulge any information about Sulay Trading and Laptis Trading Ltd and the assessee being beneficial owner of such accounts citing Swiss secrecy laws but confirmed that they had issued a communication as submitted by the assessee.

3. During the course of assessment proceedings under Section 153A of the Act, assessee was examined on oath by the Assessing Officer under Section 131 of the Act wherein he had denied any such foreign bank account and also refused to sign consent waiver form. The Assessing Officer, accordingly, made addition of Rs.27,99,45,729/- on account of peak credit in HSBC Bank. Accordingly, penalty has been levied under Section 271(1)(c) of the Act by the Assessing Officer. The Id. CIT(A) noted that the ITAT Mumbai vide order dated 07.04.2021 in ITA No. 1959 and 1960/Mum/2020 has allowed the appeals of the assessee, which order has been incorporated in the impugned appeal order from pages 6 to 18. Accordingly, he held that once the quantum itself has been deleted, then penalty levied under Section 271(1)(c) of the Act is unsustainable and does not survive.

4. In view of the aforesaid fact that the Tribunal itself has deleted the entire addition made by the Assessing Officer on which the penalty has been levied under Section 271(1)(c) of the Act, the penalty does not survive and has no legs to stand. Thus, same has rightly been cancelled by the Id. CIT(A). Accordingly, we confirm the order of Id. CIT(A).

5. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 29th June, 2022.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date : 29.06.2022

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai
- 6) Guard file

By Order

Asstt. Registrar/Sr. Private Secretary
I.T.A.T, Mumbai