



IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

BEFORE MS PADMAVATHY S, AM &
SHRI RAHUL CHAUDHARY, JM

I.T.A. No. 2706/Mum/2024
(Assessment Year: 2015-16)

I.T.A. No. 2707/Mum/2024
(Assessment Year: 2015-16)

Rohit Chatterji C/o Noella Shane, J.P. Morgan India Pvt. Ltd., 6 th Floor, JP Morgan Tower, Off CST Road, Kalina, Santacruz (East), Mumbai-400098 PAN : AACPC0928K	Vs.	DCIT, Cricle-36(2), Room No. 401, 4 th Floor, Bandra Kurla Complex, Mumbai-400051.
Appellant)	:	Respondent)

Appellant/Assessee by : Shri Ajit Jain & Shri Siddesh
Chaugule, AR
Revenue/Respondent by : Shri Nayanjyoti Nath, Sr. DR
Date of Hearing : 24.07.2024
Date of Pronouncement : 01.08.2024

ORDER

Per Padmavathy S, AM:

These appeals by the assessee are against the separate orders of the Commissioner of Income Tax (Appeals)-56, Mumbai [for short 'the CIT(A)] both dated 18.03.2024 against the orders of the DCIT-35(2), Mumbai (for short 'AO') dated 08.12.2017 passed under section 143(3) of the Income Tax

Act, 1961 (the Act) and dated 28.06.2018 passed under section 271(1)(c) of the Act.

ITA. No. 2706/Mum/2024

2. The assessee is an individual residing in Singapore. During the year under consideration, the residential status of the assessee is resident and ordinarily resident. Accordingly, the assessee filed the return of income in India on 30.08.2015 declaring a total income of Rs. 12,05,86,110/- which included 50% of the rental income from the House Property jointly owned by the assessee along with his wife Ms. Alpana Chatterji in Singapore. The case was selected for scrutiny and the statutory notices under section 143(2) was duly served on the assessee on 22.08.2016 and under section 142(1) on 11.10.2017. Based on the query raised by the AO that the assessee has not declared Rs. 6,21,652/- under the head "Income from Other Sources" and 100% of the rental income from "House Property" in Singapore amounting to Rs. 23,71,076/-, the assessee filed a revised return of income on 30.07.2017 in which the above said incomes were included. The AO completed the assessment by making the addition as per the income declared by the assessee in the revised return of income. The relevant observations of the AO are extracted below:

“3. On verification of the ITS details it was observed that the assessee has not offered Rs. 6,21,662/- under the head income from other sources and Rs. 23,71,076/- under the head House property. During the assessment proceedings, the assessee has submitted revised return of income filed on 30.03.2017, wherein he has offered the above amount for taxation. Accordingly an amount of Rs. 6,21,662/- & Rs. 23,71,076/- is being added under the head income from other sources and house property respectively. Penalty proceedings u/s. 271(1)(C) is being

initiated separately for consultant & furnishing inaccurate particular of income.

4. *The details filed during the course of scrutiny proceedings are perused and kept on record.*

5. *Subject to the above remarks and after verification of the details, total income of the assessee is compound as under:-*

	Amount (In Rs.)
<i>Returned Income</i>	<i>12,05,86,110</i>
<i>Assessed Total Income</i>	<i>12,28,70,870</i>
<i>Assessed Total Income (Rounded off to)</i>	<i>12,28,70,870</i>

6. *Assessed accordingly, the tax is calculated as per Form ITNS-150 which forms a part of this order and a copy thereof is enclosed herewith. Demand Notice and Challan issued accordingly. Issue penalty notice u/s. 271(1)(c) of the Act."*

3. The assessee filed further appeal before the CIT(A) for the additions made and short credit of tax. There was a delay of 186 days in filing the appeal before the CIT(A) and the CIT(A) without condoning the delay dismissed the appeal on the ground of delay in filing of appeal. The CIT(A) also considered the merits based on the records available and also upheld the order of the AO. The assessee is in appeal against the order of CIT(A) before the Tribunal.

4. The Id. AR submitted that the assessee is owner of 50% of the house property in Singapore jointly with his wife Ms. Alpana Chatterji. The Id. AR further submitted that the residential status of the assessee for AY 2014-15 and 2015-16 are resident ordinarily resident and therefore, the assessee filed the return of income including the global income of the assessee. For AY 2014-15 the assessee has erroneously offered 100% of the rental income from the Singapore property instead of 50%. During the year under

consideration the assessee has realized the error and in the original return of income offered only 50% of the rental income. However, during the course assessment proceedings, when a query is raised by the AO in this regard the assessee filed the revised return of income including the interest income as per Form 26AS and differential rental income to avoid any litigation. The Id AR accordingly submitted that the AO is not correct in assessing the income by making addition towards interest income and differential rental income.

5. The Id. DR on the other hand submitted that the assessee himself has offered 100% of the rental income through a revised return during the course of assessment proceedings and therefore the assessee cannot now claim to be aggrieved by the order of the lower authorities.

6. We heard the parties and perused the material on record. The assessee, who is residing in Singapore, has become a resident and ordinarily resident during AY 2014-15 and AY 2015-16 and thereby offered his global income to tax in India. During the course of assessment proceedings the AO the AO held that Rs. 6,21,652/- under the head "Income from Other Sources" and Rs. 23,71,076/- being the differential 50% of rental income has to be offered to tax. The assessee filed the revised return of income including the above incomes declared an income of Rs.12,28,70,870/-. The AO assessed the income as per the revised return of income. From the perusal of the above facts we notice that the assessee himself has offered the interest income as per Form 26AS and the differential rental income in the revised return. We notice that the AO has accepted the additional income offered as per the revised return while completing the assessment

under section 143(3) and the CIT(A) upheld the order of AO. In other words, the lower authorities have accepted the income as offered by the assessee in the revised return of income without making any other additions. Therefore when the assessee himself has offered the above two incomes in the revised return, we are unable to appreciate in what way the assessee is aggrieved by the orders of the lower authorities. Further on perusal of the grounds of appeal raised by the assessee we notice that no specific contention is raised on the grievance caused by the orders of the lower authorities. Accordingly we dismiss the various grounds raised by the assessee as not tenable.

7. The assessee raised additional ground stating that only 50% of the rental income is assessable in his hands since the House Property is jointly owned by him along with his wife. The assessee also submitted additional evidences in this regard. However during the course of hearing the Id AR did not press for admission of the additional ground and the evidences submitted. Accordingly the additional ground and additional evidences are not admitted for adjudication.

8. In result the appeal in ITA.No. 2706/Mum/2024 is dismissed

ITA.No. 2707/Mum/2024

9. This appeal pertains to the CIT(A) having confirmed the penalty levied by the AO under section 271(1)(c) of the Act. The AO has initiated penalty proceedings under section 271(1)(c) for the reason that the assessee has furnished inaccurate particulars leading to concealment of income. The

assessee submitted before the AO that the correct details of assessee's overseas income including the impugned income were not available and therefore the original return was filed with the available information. The assessee also submitted that once the tax returns in Singapore were filed, he filed the revised return declaring the correct global income on 30.03.2017. Accordingly the assessee prayed that there is no concealment of any income and that the assessee has paid all the tax due on the revised income. The AO did not accept the submissions of the assessee and held that the assessee has committed default within the meaning of explanation 1 to section 271(1)(c) of the Act and levied a penalty of Rs.9,24,760/-.

10. Aggrieved the assessee filed further appeal before the CIT(A) who confirmed the levy of penalty by holding that –

“8. The submissions of the appellant have been carefully considered. It is observed that the Assessing Officer levied Penalty under section 271(1)(c) of the Income Tax Act, 1961 in respect of addition of incomes, which were not offered to tax in the original return of income filed on 30.08.2015. Subsequently, the case of the appellant was selected for scrutiny assessment by issuing notice under section 143(2) of the Act on 22.08.2016. After receipt of notice under section 143(2) of the Act and during the course of assessment proceedings, the appellant revised his Return of Income on 30.03.2017, offering to tax Income from Other Sources of Rs.6,21,662/- and Income from House Property of Rs.23,71,076/-.

8.1. Assessment under section 143(3) of the Act was completed on 08.12.2017, assessing the total income at Rs. 12,28,70,870/- by making the above additions to the total income, declared by the appellant in the original return of income. While completing the assessment under section 143(3) of the Act, penalty proceedings under section 271(1)(c) of the Act were

separately initiated for furnishing inaccurate particulars of income leading to concealment. Penalty order under section 271(1)(c) of the Act was passed on 28.06.2018. levying minimum penalty of Rs.9,24,760/-, being 100% of the tax sought to be evaded on Rs.29,92,738/- (Income from Other Sources of Rs.6,21,662/- and Income from House Property of Rs. 23,71,076/-).

8.2. From the facts & circumstances of the case, it is observed that the Income from Other Sources of Rs.6,21,662/- and Income from House Property of Rs 23,71,076/- were reflecting in the 26AS Statement/ITS details of the appellant. Thus, the appellant was well aware that the income had to be offered for taxation. It was the legal duty on the part of the appellant to honestly show the above two incomes in his original return of income, but the appellant ignored the same while filing original return of income. The reason put forth by the appellant for not offering to tax the above two incomes in the original return of income is not found to be reasonable and sufficient cause to be accepted.

8.3. It was after the case of the appellant selected for scrutiny assessment, the appellant offered the above two incomes in the revised return of income, filed on 30.03.2017. Had the case of the appellant not selected for scrutiny assessment, the appellant would have escaped the tax liability on the above two incomes originally not offered to tax. Thus, the acts of the appellant, not offering the incomes in the original return of income, and after selection of case for scrutiny, offering the same in the revised return of income, reveals the intent of the appellant to conceal his income and to avoid legitimate tax liability for the year under consideration.

8.4. Further, the A.O., in our view, has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act. 1961. This view finds support from the judgement of

the Hon'ble Supreme Court of India in the case of MAK Data (P.) Ltd. v. Commissioner of Income-tax II [2013] 38 taxmann.com. 448 (SC). Accordingly, I concur with the decision taken by the A.O. with regard to levy of penalty u/s.271(1)(c) of the Act for furnishing of inaccurate particulars of income leading to concealment of income and thus, **dismiss the grounds of appeal raised by the appellant.**”

11. The ld AR submitted that the assessee filed the original return of income based on available information at that pertaining to his overseas income. The ld AR further submitted that the assessment year in India and Singapore are different and therefore the assessee got information pertaining to his correct overseas income only later. The ld AR also submitted that the assessee once he obtained the proper details filed the revised return of income during the course of assessment proceedings. Therefore the ld AR argued that there is no intention on the part of the assessee to conceal any income and accordingly the ld AR prayed that the penalty be deleted.

12. The ld. DR submitted that assessee declared the differential rental income and interest income only during the assessment proceedings through revised return of income. The ld DR further submitted that if the case had not been selected for scrutiny the assessee would not have offered the differential income to tax. The ld DR therefore argued that the lower authorities were correct in levying penalty for concealment of income.

13. We heard the parties and perused the material on record. The assessee has filed the original return of income declaring a total income of Rs. 12,05,86,110/-. Subsequently during the course of assessment proceedings when a query is raised by the AO regarding certain interest income and rental income not being disclosed, the assessee filed the revised return of

income including the said incomes and declared an income of Rs. 12,28,70,870/-. The AO completed the assessment by assessing the income as per the revised return of income and the same is upheld by the CIT(A). The AO has initiated penalty proceedings under section 271(1)(c) for the reason that the assessee has filed inaccurate particulars in the original return of income which lead to concealment. The CIT(A) upheld the penalty stating that if the case not been selected for scrutiny the assessee would not have filed the revised return declaring the additional income. The main contention of the assessee is that there is no intention to conceal that income for the reason that the original return was filed with the details available at that point in time. It was also submitted that the assessee irrespective of assessment wanted to file the revised return since his salary income has been over stated and there was a error in the income from other sources. The CIT(A) while upholding the penalty held that the assessee had known about his interest income and House Property income from Form 26AS and still did not include them in original return. However this finding of the CIT(A) we find is factually incorrect since Form 26AS contains details of his interest income only and not his rental income since the House Property is situated outside India. Further we notice that the assessee has in the revised return of income has corrected the income from Salary also which is reduced from Rs.11,43,06,874 to Rs.11,36,98,894/-. Therefore there is merit in the submission of the assessee that he was in any case intending to file the revised return of income to correct the error in the salary income and interest income as per Form 26AS. We also notice that the assessee has offered 100% of income from House Property in Singapore, inspite of the claim that the property is jointly owned with his wife in which assessee has 50% share. The assessee is a Singapore citizen and is assessed to tax there. The assessee

claims that assessment year in Singapore is different (calendar year) and therefore there is a time lag in getting the correct details of his Singapore income. Accordingly, to file the return of income in time, the assessee has filed the original return with the details best available at that point in time. This is substantiated by the fact that the assessee has declared excess salary income and that in the revised return rectified the same by filing the correct income from salary. From the perusal of the facts peculiar to assessee's case, in our considered view there is no willful intention on the part of the assessee to conceal the income since the assessee has filed the revised return of income rectifying all the errors in the original return of income. It is also relevant to note that the revised return of income was filed by the assessee on 30.03.2017 and the assessment under section 143(3) was completed on 08.12.2017 where the AO has assessed the income as per the income declared in the revised return by the assessee i.e. revenue has accepted the income declared in the revised return. The below observations of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. v. State of Orissa [(1972) 83 ITR 26 (SC)] is relevant in this context –

"Penalty is not to be imposed if there is no conscious breach of law. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or guilty of conduct, contumacious or dishonest, or acted in conscious disregard to its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows

from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute"

14. Considering the facts and circumstances of the case we are of the view that the levy of penalty under section 271(1)(c) is not justified and accordingly we direct the AO to delete the penalty levied.

15. In the result, the appeal in **ITA.No. 2706/Mum/2024** is dismissed and in **ITA.No. 2707/Mum/2024** is allowed.

Order pronounced in the open court on 01-07-2024.

Sd/-
(RAHUL CHAUDHARY)
Judicial Member
**SK, Sr. PS*

Sd/-
(MS. PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai