IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 13 OF 2019

THE PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL), BENGALURU ... Appellant

Versus

GOLDEN PEACE HOTELS AND RESORTS PVT. LTD. ... Respondent

Ms. Amira Abdul Razaq, Standing Counsel for the Appellant.
Mr. Parag S. Rao, Advocate for the Respondent.

Coram:- M. S. SONAK &
SMT. M. S. JAWALKAR, JJ.
Date:- 3rd February, 2020

Oral Order (Per M. S. Sonak, J)

Heard Ms Razaq, learned Advocate for the Appellant and Mr. Rao, learned Advocate for the Respondent.

2. Ms. Razaq, learned Advocate for the Appellant urges admission of this appeal on the following substantial question of law:-

> i) Whether on the facts and in the circumstances of the case, the Tribunal is right in law and fact, in deleting the penalty levied u/s. 271(1)(c) of the Income Tax Act, 1961?

3. Ms Razaq, learned Advocate submits that in this case the revised returns filed by the Respondents indicated that the disclosures

were made only by piecemeal. Relying upon *Mak Data (P.) Ltd v/s. Commissioner of Income Tax*[1], she submits that such disclosure does not relieve the assessee of the requirement of paying penalty. She submits that the assessment order in the present case makes reference to concealment and/or inaccurate particulars. In this view of the matter, she submits that the substantial question of law as aforesaid will arise and the view taken by the Commissioner (Appeals) as well as the ITAT in relation to deletion of penalty, warrants interference.

4. Mr Rao, learned Advocate for the assessee points out that there is absolutely no finding as regards concealment or furnishing of inaccurate particulars. He further points out that in the notice issued to the assessee on 30/09/2016, the Deputy Commissioner had not even bothered to strike down the relevant portion of the printed form in order to indicate whether the satisfaction is based upon the concealment of particulars or furnishing of inaccurate particulars. He relies on ***Commissioner of Income Tax-11 v/s. Shri Samson Perinchery***[2] and ***Principal Commissioner of Income Tax v/s. New Era Sova Mine***[3] to submit that on the basis of such a defective notice, award of penalty can never be sustained.

5. We have carefully examined the record as well as duly

1 [(2013) 38 Taxman.com 448 (SC)
2 [(017) 392 ITR 4]
3 [2019 SCC OnLine Bom 1032]

considered the rival contentions. Both the Commissioner (Appeals) as well as the ITAT have categorically held that in the present case, there is no record of satisfaction by the Assessing Officer that there was any concealment of income or that any inaccurate particulars were furnished by the assessee. This being a *sine qua non* for initiation of penalty proceedings, in the absence of such satisfaction, the two authorities have quite correctly ordered the dropping of penalty proceedings against the assessee.

6. Besides, we note that the Division Bench of this Court in *Samson* (supra) as well as in *New Era Sova Min*e (supra) has held that the notice which is issued to the assessee must indicate whether the Assessing Officer is satisfied that the case of the assessee involves concealment of particulars of income or furnishing of inaccurate particulars of income or both, with clarity. If the notice is issued in the printed form, then, the necessary portions which are not applicable are required to be struck off, so as to indicate with clarity the nature of the satisfaction recorded. In both *Samson Perinchery and New Era Sova Mine* (supra), the notices issued had not struck off the portion which were inapplicable. From this, the Division Bench concluded that there was no proper record of satisfaction or proper application of mind in matter of initiation of penalty proceedings.

7. In the present case, as well if the notice dated 30/09/16 (at page 32) is perused, it is apparent that the inapplicable portions have not been struck off. This coupled with the fact adverted to in paragraph (5) of this order, leaves no ground for interference with the impugned order. The impugned order is quite consistent with the law laid down in the case of *Samson Perinchery and New Era Sova Mine* (supra) and therefore, warrants no interference.

8. The contention based upon *MAK Data (P.) Ltd.*(supra) also does not appeal to us in the peculiar facts of the present case. The notice in the present case is itself defective and further, there is no finding or satisfaction recorded in relation to concealment or furnishing of inaccurate particulars.

9. In Tax Appeal No.24 of 2019, based upon the identical facts, we decline to admit the appeal, in which, the same substantial question of law was urged. Therefore, following our order in Tax Appeal No.24 of 2019 as well, we are not inclined to admit this appeal.

10. For the aforesaid reasons, we hold that no substantial question of law arises in this appeal. Consequently, this appeal is dismissed.

SMT. M. S. JAWALKAR, J. **M. S. SONAK, J.**

at*