

- Chitra Sonawane

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1424 OF 2017

The Commissioner of Income
Tax, International Taxation-1,
1st Floor, Room no.107,
Scindia House, Ballard Pier,
NM road, Mumbai-400 038

.. Appellant.

Versus

Ashutosh Bhatt
701, Pooja, 155-A,
S.V. road, Khar (W), Mumbai-52.

.. Respondent.

.....

Mr. PC Chhotaray for the appellant.

Mr. Nitesh Joshi i/b Mr. Atul K. Jasani for the respondent.

CORAM : K. R. SHRIRAM &
N.R. BORKAR, J.J.

DATED : 11TH APRIL, 2022.

PC.

1. Following substantial questions of law have been proposed in the appeal.

(i) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT erred in deleting the penalty of Rs.1,17,82,234/- imposed u/s 271(1) (c) of the Act for concealment of income and also filing of inaccurate particulars of income pertaining to the amounts in the HSBC, Zurich accounts?"

(ii) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT erred in taking cognizance of the non-est revised returns of income filed beyond the time allowed u/s 139(5) of the Act

to hold that the assessee voluntarily disclosed the impugned income and then proceeding on that incorrect premise to delete the aforesaid penalty?

2. Facts briefly stated are that, the assessee was an individual and non-resident so far as assessment year under consideration was concerned. For assessment year 2007-2008 the assessee had filed return of income on 31.7.2007 declaring total income of Rs.8,31,287/-. Thereafter the assessee revised his income and further offered an income of Rs.1,76,68,508/-. Notice u/s 148 of the Income Tax Act (for short the 'Act') was issued thereafter on 29.3.2012 as a consequence of which, assessment was finalized u/s 143(3) r/w 147 of the Act. Assessment order dated 21.3.2013 came to be passed where total income was assessed at Rs.1,85,69,800/- which is exactly the same amount as was declared by the assessee originally plus the income revised subsequently.

3. Later, the Assessing Officer held the assessee guilty of concealment of income within the meaning of Section 271 (1) (c) of the Act and levied penalty 200% of the tax sought to be levied on the amount of Rs.1,76,68,508/- which was declared subsequent to the filing of original return of income. Consequently, penalty of Rs.1,17,82,234 has been levied. Assessee carried the matter in appeal before CIT(A), who by an order dated 26.3.2014, deleted the entire

penalty levied by the A.O. on the ground that the assessee has suo-moto and voluntarily offered additional income to tax and that the income which was offered for tax by the assessee in the revised returns of income was in any case, not chargeable to tax in India. Against the said decision, the Revenue filed an appeal before the Tribunal.

4. Subsequent to his order dated 26.3.2014, CIT (A) issued a notice u/s 148 of the Act on 10.11.2014 requiring the assessee to show cause as to why earlier order passed by him on 26.3.2014 to be not amended as it was passed without taking note of the fact that assessee had made supplementary affidavit declaring additional income of Rs.1,03,49,908/- which according to CIT(A) was not voluntary because summons dated 29.9.2011 by ADIT (Inv)Unit-II(3), Mumbai had been issued u/s 131 of the Act. CIT (A) rejected reply of the assessee and by an order dated 8.12.2014 amended his earlier order dated 26.3.2014 and upheld levy of penalty to the extent it related to additional income of Rs.1,03,49,908/- disclosed by assessee in his second revisional declaration. Against that order, appeal was preferred by the assessee before the Tribunal and Revenue also filed cross appeal to the extent of CIT(A) not adding Rs.73,18,600/- declared in first revised declaration.

5. The Tribunal after hearing the parties, dismissed the original appeal filed by Revenue and cross appeal filed by Revenue and upheld

the appeal filed by the assessee.

6. Indisputable fact is that during the period when the assessee was non resident, from Assessment Year 2000-2001 to the year in question, the assessee was in employment with a U.S. Company and was resident of United States of America. During that time, he had set up a business and was beneficial owner of a Company Jonah Worldwide Limited (JWL) and beneficiary of Foundation, viz., Selinos Foundation (SF), both set up in Mauritius in 2003. Both these entities were non-residents in as far as it is relevant for the purpose of the Act and did not have any source of income in India.

7. In the year 2011 the assessee decided to settle down in India and after returning to India, filed an affidavit dated 07.09.2011 offering to tax income of Rs.73,18,600/- being peak balance lying in the accounts of these two entities JWL and SF and for this purpose filed revised return on 20.9.2011. Immediately thereafter, assessee realized that he had committed a mistake in calculating peak balance lying in bank accounts held by these two entities JWL and SF and therefore, made supplementary affidavit on 7.11.2011 offering to tax additional income of Rs.1,03,49,908/-. Consequent thereto, second revised return dated 15.11.2011 was filed showing total additional income of Rs.1,76,68,508/- on account of funds lying in the bank accounts held by

JWL and SF with HSBC Bank, Zurich. After receiving notice u/s 148 of the Act , as noted earlier, the Assessing Officer finalized assessment u/s 143 r/w 147 of the Act by accepting income as per revised return without making any further addition or raising any fresh demand. Even additional income assessed at Rs.1,76,68,508/- was exactly the same as returned by the assessee in the revised returns.

8. After hearing the parties and considering the material before them, the Tribunal found that second affidavit of 7.11.2011 declaring additional amount of Rs.1,03,49,908/- due to mistake in calculating bank peak balance was filed not because of any issue of summons and declaration was purely because of the mistake committed in earlier calculation. The Tribunal came to a finding of fact that Revenue had no information of any undisclosed income in the hands of the assessee except the declarations made by the assessee. What also impressed the Tribunal was at no stage it was the case of the Revenue that the funds that were lying in the bank accounts held by the two entities JWL and SF with HSBC Bank, Zurich could have been brought to tax in India. These monies have been offered to tax in India because the assessee made voluntary declarations and considering that aspect the Tribunal felt that levy of penalty u/s 271 (1)(c) of the Act, was not justified.

9. Mr. Chhotatray relied on *Mak Data PLtd. Vs. Commissioner of*

Income Tax-(II) reported in Indian Kanoon-<http://indiankanoon.org/doc/149438153> to submit that just because the assessee voluntarily disclosed his income, it can not be said that there was no concealment. Facts in the case at hand, are different in as much as in Mak Data Pvt. Ltd. (supra), the Apex Court came to conclusion that the surrender in that case was not voluntary. In the case at hand, the Tribunal has correctly come to a conclusion that the declaration was voluntary.

10. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

The appeal is devoid of merits and it is dismissed with no order as to costs.

(N.R. BORKAR, J.)

(K.R. SHRIRAM, J.)