

आयकर अपीलीय अधिकरण
मुंबई पीठ “ एच ”, मुंबई पीठ
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री गगन गोयल, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “H”, MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
बी.एम.ए. 5/मुं/ 2022 (नि.व.2016-17)
BMA NO. 5/MUM/2022(A.Y. 2016-17)

Addl.CIT, Central Range-8,
Room NO.657, 6th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020.

..... अपीलार्थी /Appellant

बनाम Vs.

Tejal Ashish Mehta,
7-B, Geetanjali, 9N Gamadia Cross Road,
Mumbai 400 026.

PAN:AAHPM-3608-F

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Madhumalti Ghosh, CIT-DR

प्रतिवादी द्वारा/Respondent by : Shri Prakash Jotwani, Advocate

सुनवाई की तिथि/ Date of hearing : 09/01/2023

घोषणा की तिथि/ Date of pronouncement : 03/04/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-51, Mumbai [in short ‘the CIT(A)’] dated 25/07/2022, for the Assessment Year 2016-17.

2. The Revenue in appeal has assailed the order of CIT(A) in deleting penalty of Rs. 10.00 lacs levied u/s. 43 of Black Money (Undisclosed Foreign

Income and Assets) and Imposition of Tax Act, 2015 (herein after referred to as “the Act”).

3. Ms. Madhumalti Gosh, representing the Department submitted that the assessee is an Indian Resident having an asset located outside India in the form of Life Insurance Policy. As per the provisions of the Act the assessee was under obligation to disclose all assets held by assessee located outside India in Schedule –FA of the Income-tax Return. The assessee failed to disclose Life Insurance Policy held by assessee outside India in Schedule-FA to the return of income. Hence, the Assessing Officer levied penalty u/s. 43 of the Act. In first appellate proceedings, the CIT(A) deleted the penalty placing reliance on the decision of Tribunal in the case of Addl.CIT vs. Leena Gandhi Tiwari in BMA No.1/Mum/2022 decided on 29/03/2022. The Id. Departmental Representative submitted that the CIT(A) failed to take note of Circular No.13 of 2015 dated 06/07/2015, wherein the Board has clarified while answering Question No.18 that disclosure of foreign asset in Schedule –FA in return of income is mandatory. Question No.18 of the said Circular specifically deals with the non-reporting of the assets in Schedule –FA of the Income-tax return. In a categoric answer to the said question, the Board has clarified that if the foreign assets are not reported in Schedule –FA of the return of income for assessment year 2016-17 or in any subsequent assessment years by a person being the resident, then he shall be liable for penalty of Rs.10.00 lacs u/s. 43 of the Act. The Id. Departmental Representative further submitted that no exceptions have been provided under the Act for not levying penalty in the event of non-reporting of foreign assets in Schedule-FA to the return of income.

4. Shri Prakash Jotwani appearing on behalf of the assessee submitted that the assessee had Life Insurance Policy of a foreign company which is a foreign asset. The assessee declared surrender value of policy under section 59 of the Act and paid 30% tax and 30% penalty thereon. The declaration made by the assessee under One Time Compliance Scheme was accepted by the CIT and a certificate in Form-7 was issued by the CIT towards tax compliance with regard to foreign asset. After declaration of the said policy, the assessee in F.Y. 2015-16 surrendered the policy and the receipts therefrom were declared in the return of income in Schedule –EI of the return for assessment year 2016-17. The Ld.Counsel for the assessee submitted that after the surrender of policy the assessee was under bonafide belief that since the declaration of foreign asset is made under One Time Compliance Scheme of the Act and that the policy has been surrendered during the Financial Year 2015-16, there was no further requirement to declare the same in the return of income. The Ld.Counsel for the assessee pointed that the assessee in the Statement of Income filed along with return of income had disclosed maturity value of insurance policy under the head “exempt income”. He further submitted that non-disclosure of insurance policy in Schedule-FA was out of bonafide belief that the insurance policy has since been surrendered and it is no more in existence, there is no requirement to disclose in Schedule –FA. He contended that once the assessee has made declaration in accordance with the scheme under the Act and the said declaration being accepted, tax and penalty paid no further penalty should be levied for merely non-mentioning of foreign Life Insurance Policy in Schedule – FA. In support of his submissions, the Ld.Counsel for the assessee placed reliance on the following decisions:

(i) Pranit Kirthikant Nanavati vs. ACIT in ITA No.2277/Ahd/2017 for assessment

Year 2013-14 decided on 28/09/2021.

(ii) ACIT vs. Leena Gandhi Tiwari, BMA NO.1/Mum/2022,A.Y.2017-18 decided

On 29/03/2022.

5. We have heard the submissions made by rival sides and have examined orders of authorities below. The assessee has furnished a copy of Income Tax return for assessment year 2016-17. A perusal of the same shows that in Schedule – EI, wherein the assessee was required to declare exempt income, the assessee has duly reflected the maturity value of the insurance policy. The same amount has been disclosed by the assessee in the Statement of Income annexed to the return of income. It is an undisputed fact that the assessee has paid 30% taxes on fair market value of foreign asset along with 30% penalty, aggregating to 60% of the total value of the foreign asset under One Time Compliance Scheme of the Act. The CIT(A) deleted the penalty levied u/s. 43 of the Act by Assessing Officer by placing reliance on the decision of Tribunal in the case of Leena Gandhi Tiwari(supra).

6. It is an undisputed fact that by the end of F.Y.2015-16 the foreign asset ceases to exist as the assessee surrendered the said policy and the maturity amount of policy was duly reflected in Income Tax Return. Bonafide mistake in not disclosing foreign asset in Schedule –FA of the Income Tax Return is a reasonable cause for deleting penalty in the given circumstances. Furnishing of inaccurate particulars about asset located outside India cannot be imputed as the assessee had already made declaration under the Act the same was

accepted and maturity amount of Life Insurance Policy has been disclosed in Income Tax Return. Thus, taking into consideration entire facts, we are of the view that the impugned order warrants no interference. Hence, the same is upheld and appeal by the Revenue is dismissed being devoid of any merit.

7. In the result, appeal by the Revenue is dismissed.

Order pronounced in the open court on Monday the 03rd day of April, 2023.

Sd/-

(GAGAN GOYAL)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 03/04/2023

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
- 4.. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar), ITAT, Mumbai