

2022 LiveLaw (Del) 203

IN THE HIGH COURT OF DELHI AT NEW DELHI

MANMOHAN; SUDHIR KUMAR JAIN, JJ.

ITA 37 – 43 /2022; 9th March, 2022

MRS. JAYANTI DALMIA versus DY. COMMISSIONER OF INCOME TAX

Appellant Through Mr.Ramesh Singh, Sr.Advocate with Ms.Shreya Jain and Mr.Gaurav Tanwar, Advocates.

Respondent Through Mr.Ajit Sharma, senior standing counsel.

J U D G M E N T

MANMOHAN, J:

C.M.Nos.11776/2022 & 11778/2022 in ITA No.37/2022 C.M.Nos.11812/2022 & 11814/2022 in ITA No.38/2022
C.M.Nos.11817/2022 & 11819/2022 in ITA No.39/2022 C.M.Nos.11902/2022 & 11904/2022 in ITA No.40/2022
C.M.Nos.11907/2022 & 11909/2022 in ITA No.41/2022 C.M.Nos.11912/2022 & 11914/2022 in ITA No.42/2022
C.M.Nos.11918/2022 & 11920/2022 in ITA No.43/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the applications stand disposed of.

C.M.No.11777/2022 in ITA Nos.37/2022 C.M.No.11813/2022 in ITA Nos.38/2022 C.M.No.11818/2022 in ITA Nos.39/2022
C.M.No.11903/2022 in ITA Nos.40/2022 C.M.No.11908/2022 in ITA Nos.41/2022 C.M.No.11913/2022 in ITA Nos.42/2022
C.M.No.11919/2022 in ITA Nos.43/2022

Keeping in view the averments in the applications as well as the Covid-19 pandemic and the fact that the appellant had filed applications under Section 254(2) of the Income Tax Act before the ITAT, which have been disposed of only on 20th January, 2022, the delay in filing the present appeals is condoned.

Accordingly, the applications stand allowed.

ITA Nos.37/2022 & C.M.Nos.11775/2022 & 11779/2022 ITA Nos.38/2022 & C.M.Nos.11811/2022 & 11815/2022 ITA
Nos.39/2022 & C.M.Nos.11816/2022 & 11820/2022 ITA Nos.40/2022 & C.M.Nos.11901/2022 & 11905/2022 ITA
Nos.41/2022 & C.M.Nos.11906/2022 & 11910/2022 ITA Nos.42/2022 & C.M.Nos.11911/2022 & 11915/2022

1. Present appeals have been filed challenging the order dated 31 ITA Nos.43/2022 & C.M.Nos.11917/2022 & 11921/2022 st October, 2018 as well as the order dated 20th January, 2022 passed by the Income Tax Appellate Tribunal, Delhi Bench, wherein the Income Tax Appellate Tribunal (ITAT) has upheld the order of the CIT with respect to non-compliance of the notice issued under Section 142(1) of the Income Tax Act, 1961 (hereafter referred to as “the Act”) by the Appellant-assessee and the consequent imposition of penalty under Section 271(1)(b) of the Act. It is pertinent to mention that vide order dated 20th January, 2022, the ITAT had dismissed the applications filed by the Appellant-assessee under Section 254(2) of the Act.

2. Briefly stated the relevant facts are that the Revenue had received documents from the French official sources, indicative of the fact that the Appellant-assessee was an account holder no.2 of a Swiss Bank account in HSBC Bank. The Appellant-assessee

was requested to furnish the details of account opening form in respect of the foreign bank account, complete bank statements in original since beginning and residential status as per the Act as on the date of opening of the above mentioned foreign Bank Accounts. In the alternative, the Appellant-assessee was served with a notice calling upon her to co-operate and, inter alia, fill a consent-cum-waiver form. The form is set out in the documents annexed to these appeals and requires the Appellant-assessee's consent to enable the tax authorities to obtain information from Swiss Bank in respect of bank accounts held there. The Appellant-assessee disputes that she was ever an account holder in the Swiss banks.

3. Learned senior counsel for the Appellant-assessee submits that the Appellant-assessee was not obliged to fill such consent form as she was in no way involved in those transactions and/or she had no connection with the bank accounts. He further states that in the case of the Appellant-assessee, the protective assessment order has been deleted by the Commissioner of Income Tax (Appeals) vide order dated 11th August, 2017. He submits that once a protective assessment order has been deleted, there is no question of any penalty being levied upon the Appellant-assessee. He also states that penalty proceeding initiated against the Appellant-assessee's husband had been dropped by the ITAT vide order dated 06th May, 2020.

4. Learned Senior counsel for the Appellant-assessee also submits that to ask the Appellant-assessee to furnish a consent letter is violative of Article 21 of the Constitution of India. In support of his submission, he relies upon the judgment passed by the Supreme Court in **Selvi & Ors. vs. State of Karnataka, (2010) 7 SCC 263**.

5. A perusal of the paper book reveals that the ITAT in the impugned orders has followed the decision of this Court in the case of Mr. Sanjay Dalmia in ITA Nos.339-345/2018 wherein penalty u/s 271(l)(b) of the Act was upheld for all the seven years arising out of the same search, relating to the same bank account and for the same reason of not filing the consent letter. The relevant portion of the order dismissing the appeals filed by Mr.Sanjay Dalmia is reproduced hereinbelow:-

".....This Court has considered the submissions of the parties. The material on the record indicates that the French official source shared information with the Indian Government with respect to accounts held in HSBC Bank. Prima facie, such material disclosed that the assessee was an attorney of some account holder. In the Court's opinion, if the assessee really had no connection with such accounts, no prejudice could really have ensued to him if he would have complied with the notice under Section 142(1) of the Act and filed the consent form.

In these circumstances, the penalty cannot be held to be erroneous or unwarranted. No question of law arises. The appeals are dismissed."

6. The Special Leave Petitions filed against the aforesaid orders being SLP(C) Nos. 15828-15829/2018 were dismissed by the Supreme Court vide order dated 10th July, 2018.

7. This Court is of the view that the protective assessment against the Appellant-assessee was deleted by the CIT(A) as the additions had been made both on protective and substantive basis in the hands of her husband with regard to the same Swiss Bank account as he was account holder No.1. The relevant portion of the order dated 11th August, 2017, passed by the CIT(A), is reproduced hereinbelow:-

“6. Ground no.3 for the Ays.2006-07 and 2007-08 relate to contentions of the appellant against addition made by the AO under section 69 of the IT Act towards unexplained investment in relation to an alleged offshore bank account HSBC Bank Geneya, Switzerland. This ground has been adjudicated by me in the case of Sh. Anurag Dalmia for the AY 2006-07 and 2007- 08 in which after discussing the issue involved in detail, the appeals have been dismissed. On identical facts, for these years in the appellant’s case also, the appeal on this ground are dismissed. However, since the additions in the case of appellant were made on protective basis and the substantive additions made in the case of Sh. Anurag Dalmia have been confirmed by me, therefore, the additions made on protective basis deserves to be deleted.”

8. This Court is further of the view that the judgment passed by the Supreme Court in **Selvi & Ors** (supra) has no application to the facts of the present case as the same has only upheld the principle of ‘right of silence’ and, that too, in the context of criminal proceedings. Though there are certain observations with regard to the non-penal proceedings, yet the same is not the ratio of the said judgment.

9. In any event, this Court is of the opinion that if the assessee really had no connection with the Swiss Bank accounts, no prejudice would have been caused to her if she had complied with the notice under Section 142(1) of the Act and filled the consent form. Moreover, it cannot be that penalty is upheld with regard to the attorney holder (Mr. Sanjay Dalmia) of the Swiss bank account and not with regard to the account holder no.2 (Appellantassessee) qua the same bank account.

10. In these circumstances, no question of law arises of consideration and the penalty imposed upon the Appellant cannot be held to be erroneous and unwarranted. Accordingly, the present appeals are dismissed.