

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/274/2024
IA NO: GA/1/2024

PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA
VS.
CHANDRAVADAN DESAI (HUF)

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Dated : 16TH APRIL, 2025

Mr. Prithu Dudhoria, Adv.

...for the appellant

Mr. J. P. Khaitan, Sr. Adv.
Mr. Aritra Nag, Adv.

...for the respondent

HEARD ON : 16.04.2025

JUDGMENT DELIVERED ON : 16.04.2025

T.S. SIVAGNANAM, C.J. :

1. This appeal filed by the Department under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 17th April, 2024 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (Tribunal) in ITA No.674/Kol/2023 for the Assessment Year 2014-15.
2. The revenue has raised the following substantial questions of law for consideration :

“a) WHETHER the Learned Income Tax Appellate Tribunal (ITAT) was justified in law in quashing the order passed u/s 271(1)(c) upon holding the penalty proceedings as void ab-initio and bad in law ?

b) WHETHER the Learned Income Tax Appellate Tribunal (ITAT) was justified in law in not discussing the merits of the case ?

c) WHETHER the Learned Income Tax Appellate Tribunal (ITAT) was justified in law in not considering the provision of section 171(4) read with section 171(8) of the Income Tax Act, 1961 whereby the assessee would be liable for penalty despite dissolution of the HUF ?”

3. We have heard Mr. Prithu Dudhoria, learned standing counsel appearing for the appellant/Department and Mr. J. P. Khaitan, learned Senior Advocate appearing for the respondent/assessee.
4. The assessing officer completed the assessment for the assessment year under consideration under Section 143(3) of the Act by order dated 30.12.2016. While completing the assessment, an addition of Rs.7,29,59,117/- was made on the ground of disallowance of capital loss on dissolution of the HUF. In the assessment order, the Assessing Officer has stated that he is satisfied that the assessee has furnished inaccurate particulars of the income by claiming the said amount as deduction and hence penalty proceedings under Section 271(1)(c) of the Act is initiated. The assessee filed a rectification petition under Section 154 of the Act dated 27.3.2017, in which it was pointed out that the total income has been assessed at Rs.36,11,706/- by the Assessing Officer. However, the brought-forward long-term capital loss of previous years amounting to

Rs.58,93,223/- has not been considered, pursuant to which total income would be nil. Therefore, the assessee stated that there would not be any tax payable by the assessee. Necessary documents were also annexed to the petition filed under Section 154. It appears that no formal orders have been passed by the Assessing Officer in the petition filed under Section 154 of the Act. At the same time, no tax has been demanded from the assessee which would go to show that the entire issue is tax neutral. Penalty proceedings were initiated, as noted above, on the alleged ground that the assessee furnished inaccurate particulars of income by claiming the said amount as deduction. In this regard, a show-cause notice dated 23.11.2016 was issued to which the assessee submitted their reply dated 5.12.2016 contending as follows :-

*“Your assessee had computed capital gain/loss on sale of shares which were held as Investment and Trading in the books as on 31.03.2013 and any further purchase/sale of shares during the F.Y. 2013-14. The Capital Gain has been computed on the assets that were held by the HUF and/or acquired by HUF on its own. **No gain/loss has been computed on the assets distributed to its members upon partition. Further, no capital gain/loss has been computed by the assessee on the asset (shares) transferred to its members on partition of said HUF.** In view of the fact that all the assets transferred to its members upon partition of HUF no loss/gain have been computed as the said distribution has been done at cost/book value in tune with the provisions the provisions of Section 47 of the Income Tax Act 1961.”*

5. Though such was the stand taken by the assessee, the Assessing Officer while passing the order under Section 271(1)(c) of the Act, dated 30.6.2017, held that the added amount is deemed to represent the income in respect of which particulars have been concealed. Thus, the reason for levying penalty is contrary to the reason for which the show-cause notice was issued prior to commencement of the penalty proceedings. This is a serious error which would result the order as a nullity. The assessee carried the matter in appeal before the National Faceless Appeal Centre (NFAC) contending that the order of penalty has been passed on a non-existent person namely, HUF, which has been dissolved and the properties have been partitioned to the erstwhile co-parceners. Further, it was contended that the order of penalty is levied on the ground of concealment of particulars of income, whereas the penalty proceedings were initiated on the alleged ground of furnishing inaccurate particulars. Further, the assessee contended that the limitation for initiation of the proceedings expired on 30.6.2017 and therefore, the entire proceedings are ab initio void. The assessee also placed reliance on various decisions, namely, the decision of the Hon'ble Supreme Court in *CIT vs. Maruti Suzuki India Limited*, 416 ITR 613, wherein the Supreme Court held that the notice and/or the consequent order issued in the name of the non-existent person renders the entire proceedings and all consequent actions to be a nullity in the eye of law. Reliance was also placed on the decision of the High Court of Patna in

CIT vs. Sanichar Sah Bhim Sah, 27 ITR 307, wherein it was held that when the assessee HUF will be completely partitioned, which was acknowledged by the Assessing Officer in the assessment order passed for the relevant year and after completion of assessment when the Assessing Officer issued notice under Section 28(1)(c) and levied penalty for concealment of income upon the HUF which was non-existent at the material time, on appeal the penalty was cancelled. Reliance was also placed on a decision of the High Court of Andhra Pradesh in the case of *Manhakali Subba Rao Mahankali Nageswara Rao vs. CIT, 31 ITR 867*, wherein it was held that the members of erstwhile HUF were not liable to be penalized under Section 28 of the Act (1921) when the HUF was partitioned before the issue of penalty notice under Section 28. The assessee also pleaded that when the entire issue was tax neutral, the question of imposition of penalty would not arise. In this regard reliance was placed on the decision of the High Court of Gujarat in the case of *CIT vs. Gujarat Fertilizers & Chemicals Ltd, 36 taxmann.com 533*, wherein it was held that where an exercise of addition/disallowance ultimately results in tax neutrality, no penalty is leviable under Section 271(1)(c) of the Act. The contention which was raised by the assessee did not find favour with the appellate authority and by order dated 9.5.2023, the appeal was rejected. Challenging the same, the assessee was on appeal before the Tribunal. Though the assessee challenged the order, both on technical grounds as well as on merits, the learned Tribunal after going

through the facts of the case thought fit to decide the technical aspect of the matter namely, as to whether the penalty can be imposed on the HUF which is no longer in existence. After taking note of the facts as well as the decision relied on by the assessee, the learned Tribunal came to the conclusion that the assessee HUF was dissolved on 26.3.2014 and the notice for carrying out the penalty proceedings as well as the penalty order has been issued in the name of a non-existent entity. This fact having not been controverted by the revenue, the learned Tribunal applied the decision of the Hon'ble Supreme Court in *Maruti Suzuki India Limited (supra)* and held that the entire penalty proceedings are ab initio void. One more aspect which was noted by the learned Tribunal is that the assessee did not challenge the addition made in the assessment order as it was tax neutral. Apart from that, the revenue also did not raise a demand on the assessee pursuant to the assessment order dated 30.12.2016, presumably on account of the fact that they were satisfied with the case pleaded by the assessee in the rectification petition filed under Section 154 of the Act dated 27.3.2017.

6. Mr. Prithu Dudhoria, learned standing counsel appearing for the revenue, also placed reliance on Section 171 of the Act. This contention was not raised by the revenue before the learned Tribunal nor was it one of the grounds on which the appellate authority sustained the order of penalty. Nonetheless, we have considered the said submission made by the learned standing Counsel.

7. Reference was made to sub-section (1) and sub-section (8) of Section 171 to support the stand of the revenue. Even assuming without admitting that Section 171 could be relied on by the revenue, it goes without saying that the individual members of the erstwhile HUF which has since been dissolved and partitioned completely were never put on notice by the Assessing Officer before initiating penalty proceedings. This goes to the root of the matter as a person cannot be condemned without being heard. Therefore, the argument by relying upon Section 171 does not take the case of the revenue any forward. One more aspect which we have taken note of is that partition of the HUF completely was accepted by the Assessing Officer while completing the assessment under Section 143(3) of the Act and therefore, it will be too late for the revenue to now turn back and say that they will not recognize the partition of the HUF in full form. As already noted, the reason for which notice was issued for initiating penalty proceedings, is different from the conclusion which was arrived at by the Assessing Officer while passing the penalty order dated 30.6.2017. This is also yet another incurable defect which is called for interference of the penalty order. At this juncture, we need to point out that the law is well settled that the penalty proceedings are separate and independent from the assessment proceedings. Even assuming an addition has been made in the assessment proceedings, that will not automatically warrant levy of penalty. There is a mandate cast on the revenue to show with sufficient material that there was a concealment of

income by the assessee and the assessee attempted to evade payment of tax. In the instant case, the assessee upon partition of the HUF in full form mistakenly treated the assets in the hands of erstwhile co-parceners to be a transfer. This was subsequently ascertained during the course of the assessment proceedings and the assessee put forth the case to be a one of genuine mistake. If that be the case on facts, it is also one more ground for not to levy any penalty on the assessee.

8. Thus, we are of the view that the learned Tribunal was right in allowing the assessee's appeal and setting aside the penalty order.
9. For the above reasons, the appeal filed by the revenue is dismissed and the substantial questions of law are answered on the above terms against the revenue.
10. Consequently, the stay application IA No: GA/1/2024 is also dismissed.

(T.S. SIVAGNANAM, C.J.)

I agree.

(CHAITALI CHATTERJEE (DAS), J.)