

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.1859/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Smt. Anita Sunil Mahajan Kedriya Rajaswa Bhavan, Ram Ganesh Gadkari Chowk, Old Agra Road, Nashik – 422002 PAN: AMQPM9510P	Vs.	ACIT, Circle-1, Nashik
Appellant		Respondent

Assessee by Shri Pramod Shingte
Revenue by Shri Vitthal Bhosale

Date of hearing 09-07-2021
Date of pronouncement 12-07-2021

आदेश / ORDER

PER R.S.SYAL, VP:

This appeal by the assessee is directed against the order passed by the ld. CIT(A) on 9.5.2017 echoing the penalty of Rs.39,28,638 imposed by the Assessing Officer (AO) u/s 271AA of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for failure to keep and maintain information as required u/s 92D and not furnishing the report u/s 92E of the Act in relation to the assessment year 2013-14.

2. Succinctly, the factual matrix of the case is that the assessee filed her return declaring total income at Rs.18,61,808. The assessee reported four payments totaling Rs.19,64,31,914, in the tax audit report, as having been made to persons specified u/s 40A(2)(b) of the Act as under:

Mahajan Adat Dukan Prop Yogita Mahajan Purchases		Rs.16,34,02,140/-
Soni Adat Dukan Prop Prabhavati Mahajan Purchases		Rs.3,28,31,774/-
Sunil P Mahajan	Rent	Rs.1,80,000/-
Yogesh P Mahajan	Rent	Rs.1,80,000/-

3. The AO observed that total of such transactions in the nature of Specified Domestic Transactions (SDTs) exceeded the qualifying limit of Rs.5 crore, requiring the assessee to maintain documents and information in terms of sections 92D and furnish audit report as per section 92E of the Act. He called upon the assessee to furnish the same, in reply to which the assessee stated that the tax auditor inadvertently reported such payments as having been made to persons specified u/s 40A(2)(b) of the Act. Not convinced, the AO held that since the assessee had herself reported transactions u/s 40A(2)(b) in the tax audit report u/s 44AB and further there was no

admission of error by the auditor, the assessee was liable to be visited with penalty u/s 271AA for not complying with the provisions of section 92D and 92E of the Act. Total of such transactions given in the tax audit report u/s 40A(2)(b) at Rs.19.64 crore was considered for levying penalty of Rs.39,28,638 @ 2%. The assessee reiterated her stand before the Id. CIT(A) that payments were made to such persons who were not covered within the definition of 'relative'. Rejecting the assessee's contention, the Id. first appellate authority affirmed the penalty, against which the assessee has come up in appeal before the Tribunal.

4. We have heard both the sides through Virtual Court and gone through the relevant material on record. Penalty has been imposed under the provisions of section 271AA, the relevant part of which reads as under:

“(1)... if any person in respect of an international transaction or *specified domestic transaction*,—

- (i) fails to keep and maintain any such information and document as required by sub-section (1) or sub-section (2) of section 92D;
- (ii) fails to report such transaction which he is required to do so; or
- (iii) maintains or furnishes an incorrect information or document,

the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent of the

value of each international transaction or specified domestic transaction entered into by such person.

(2).....”

5. On circumspection of the above provision, it is clear that the penalty gets attracted where the assessee fails to keep records and documents etc., *inter alia*, in respect of a *specified domestic transaction*. The term ‘specified domestic transaction’ has been defined in section 92BA, which at the material time read as under:-

“For the purposes of this section and sections 92, 92C, 92D and 92E, "specified domestic transaction" in case of an assessee means any of the following transactions, not being an international transaction, namely:—

(i) any expenditure in respect of which payment has been made or its to be made to a persons referred to in clause (b) of sub-section (2) of section 40A

(ii) to (vi)

and where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of five crore rupees.”

6. A conjoint reading of sections 271AA and 92BA, insofar as it is relevant for our purpose, transpires that if an assessee violates sections 92D/92E in respect of a specified domestic transaction, being, incurring of any expenditure in respect of which payment has been made or is to be made to persons

referred to in section 40A(2)(b), it is liable to be visited with penalty at the rate of 2% of the value of the SDT.

7. The crux of the AO's point of view is that the assessee paid Rs.19.64 crore to the persons referred to in section 40A(2)(b) as per her own admission in the tax audit report and thus breached the mandate of sections 92D/92E. *Au contraire*, the case of the assessee is that she did not make payments to persons referred to section 40A(2)(b) of the Act. Before proceeding with the matter, we want to clarify that there can be no estoppel against the provisions of the Act. If a particular transaction does not fall within the ambit of a specific provision, the same cannot be considered as so falling merely because the assessee took a mistaken view on that score. Coming back, we need to decide as to whether the transactions reported by the assessee u/s 40A(2)(b) were actually covered within its ken. To resolve the controversy, let us have a glance at the relevant portion of section 40A(2)(b), pertaining to an individual, as is the assessee, which runs as follows:-

“(b) The persons referred to in clause (a) are the following, namely:—

(i) where the assessee is an individual ... any relative of the assessee”

8. It talks of payments made by an individual to any of his or her relatives. The entire controversy rotates around the meaning of the term `relative' as used in section 40A(2)(b), which has not been admittedly defined in section 40A of the Act. The term has been so defined in section 2(41): `in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual'. The Id. CIT(A) has upheld the imposition of the penalty by specifically noting the definition of the term `relative' in para 7.2 of his order, as under:-

"relative" means—

- (i) spouse of the individual;
- (ii) brother or sister of the individual;
- (iii) brother or sister of the spouse of the individual;
- (iv) brother or sister of either of the parents of the individual;
- (v) any lineal ascendant or descendant of the individual;
- (vi) any lineal ascendant or descendant of the spouse of the individual;
- (vii) spouse of the person referred to in clauses (ii) to (vi);”

9. The above definition of the term 'relative' in the impugned order appears to have been borrowed by the Id. CIT(A) from the Explanation to section 56(2)(v), which opens as follows: "Explanation.—For the purposes of this clause, 'relative' means-". Thereafter the above clauses from (i) to (vii) have been set out. It is overt from the opening part of the Explanation that the definition of the term 'relative' as given herein is 'For the purposes of this clause' only. On the other hand, section 2 is definition clause of the Income-tax Act, which begins with the following words: "In this Act, unless the context otherwise requires...". Thus, it is graphically clear that the definition clause applies to all the provisions under the Act unless the context of a particular section or set of sections otherwise requires. We have noted the language of section 56(2)(v), in which the context of the 'relative' requires otherwise and for that purpose, a separate definition has been given in the Explanation. Obviously, while interpreting section 56(2)(v), we cannot go with the meaning of the term 'relative' as given in section 2(41). It will have to be understood there as defined in the Explanation. Once we are out of section

56(2)(v), again the definition of the term 'relative' as given in section 2(41) comes to govern, which has to be followed, unless the context of a particular section otherwise requires. We have noted above that no definition of the term 'relative' has been given in section 40A(2)(b). Thus, it is the ambit of the term 'relative' as given in section 2(41), which will prevail for understanding the connotation of the term 'relative' u/s 40A(2)(b) of the Act over the one given in the Explanation to section 56(2)(v), as has been taken cognizance by the Id. CIT(A). Ex consequenti, only the transactions with husband, wife, brother or sister or any lineal ascendant or descendant of the individual will get enveloped under section 40A(2)(b) of the Act.

10. Now we advert to the nature of payments that have been covered u/s 40A(2)(b) in the tax audit report in form no. 3CD. The first transaction of purchases amounting to Rs.16.34 crore was with Yogita Yogesh Mahajan, who is assessee's husband's brother's wife. She is neither the husband nor wife or brother or sister or any lineal ascendant or descendant of the assessee and hence not covered within the definition of 'relative' as

given in section 2(41). The second transaction of purchases amounting to Rs.3.28 crore is with Prabhavati Mahajan, proprietor Soni Adat Dukan, who is mother-in-law of the assessee. She is also not covered under section 2(41). The third transaction is payment of rent of Rs.1.80 lakhs to Yogesh Pandurang Mahajan, who is assessee's husband's brother. He too does not fall within the definition of 'relative' as given in section 2(41). The last transaction is payment of rent of Rs.1.80 lakhs to Sunil Pandurang Mahajan, who is the assessee's husband. This transaction is covered within the meaning of term "relative" as given in section 2(41) and hence falls within the realm of section 40A(2)(b).

11. We have noticed above the definition of specified domestic transaction as given in section 92BA as embracing, inter alia, the transactions referred to in section 40A(2)(b) of the Act provided "the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of five crore rupees." As the assessee's transaction covered u/s 40A(2)(b) is restricted only to Rs.1.80 lakh, the same would not qualify as SDT u/s 92BA. A fortiori, sections 92D/92E also

do not get magnetized and consequently, there can be no question of any penalty u/s 271AA. We, therefore, order to delete the penalty.

12. In the result, the appeal is allowed.

Order pronounced in the Open Court on 12th July, 2021.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 12th July, 2021
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-1, Nashik
4. The Pr.CIT-1, Nashik
5. DR 'A', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	09-07-2021	Sr.PS
2.	Draft placed before author	12-07-2021	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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