

IN THE HIGH COURT OF BOMBAY AT GOA
TAX APPEAL NO. 24 OF 2019

THE PRINCIPAL COMMISSIONER OF
INCOME TAX (CENTRAL), BENGALURU ... Appellant
Versus
GOA COASTAL RESORTS AND RECREATION
PVT. LTD. ... Respondent

Ms. Amira Abdul Razaq, Advocate for the appellant.

Shri P. Rao, Advocate for the respondent.

Coram:- M. S. SONAK &

NUTAN D. SARDESSAI, JJ.

Date:- 11th November, 2019

ORAL ORDER : (Per M.S. Sonak,J)

Heard Ms Razaq, learned Advocate for the appellant and Shri.
Rao, learned Advocate for the respondent No.2.

2. Ms. Razaq, learned Advocate for the appellant urges admission of this appeal on the following substantial questions of law:

i) Whether on the facts and in the circumstances of the case, the Tribunal is right in law and fact, in deleting the penalty levied u/s. 271(1) (c) of the Income Tax Act, 1961?

3. Ms Razaq, learned Advocate submits that in this case the revised returns filed by the respondents indicated that the disclosures were made only by piecemeal. Relying upon *Mak Data (P) Ltd v/s. Commissioner of Income Tax*¹, she submits that such disclosure does not relieve the assessee of the requirement of paying penalty. He submits that the assessment order in the present case makes reference to concealment and/or inaccurate particulars. In this view of the matter, she submits that the substantial questions of law as aforesaid will be arises and the view taken by the Commissioner (Appeals) as well as the ITAT in relation the deletion of penalty, warrants interference.

4. Mr Rao, learned Advocate for the assessee points out that there is absolutely no finding as regards concealment or furnishing of inaccurate particulars. He further points out that in the notice issued to the assessee on 30/09/2016, the Deputy Commissioner had not even bothered to strike down the relevant portion of the printed form in order to indicate whether the satisfaction is based

1 [(2013) 38 Taxman.com 448 (SC)]

upon the concealment of particulars or furnishing of inaccurate particulars. He relies on Commissioner of Income Tax-11 v/s. Shri Samson Perinchery² and Principal Commissioner of Income Tax v/s. New Era Sova Mine³ to submit that on the basis of such a defective notice, award of penalty can never be sustained.

5. We have carefully examined the record as well as duly considered the rival contentions. Both the Commissioner (Appeals) as well as the ITAT have categorically held that in the present case, there is no record of satisfaction by the Assessing Officer that there was any concealment of income or that any inaccurate particulars were furnished by the assessee. This being a sine qua non for initiation of penalty proceedings, in the absence of such petition, the two authorities have quite correctly ordered the dropping of penalty proceedings against the petitioner.

6. Besides, we note that the Division Bench of this Court in *Samson*(supra) as well as in *New Era Sova Mine*(supra) has held that the notice which is issued to the assessee must indicate whether the Assessing Officer is satisfied that the case of the assessee

2 [(017) 392 ITR 4]

3 [2019 SCC OnLine Bom 1032]

involves concealment of particulars of income or furnishing of inaccurate particulars of income or both, with clarity. If the notice is issued in the printed form, then, the necessary portions which are not applicable are required to be struck off, so as to indicate with clarity the nature of the satisfaction recorded. In both *Samson Perinchery* and *New Era Sova Mine*(supra), the notices issued had not struck off the portion which were inapplicable. From this, the Division Bench concluded that there was no proper record of satisfaction or proper application of mind in matter of initiation of penalty proceedings.

7. In the present case, as well if the notice dated 30/09/16 (at page 33) is perused, it is apparent that the relevant portions have not been struck off. This coupled with the fact adverted to in paragraph (5) of this order, leaves no ground for interference with the impugned order. The impugned order are quite consistent by the law laid down in the case of *Samson Perinchery* and *New Era Sova Mine*(supra) and therefore, warrant no interference.

8. The contention based upon *MAK Data (P) Ltd.*(supra) also does not appeal to us in the peculiar facts of the present case. The notice in the present case is itself is defective and further, there is no

finding or satisfaction recorded in relation to concealment or furnishing of inaccurate particulars.

9. For the aforesaid reasons, we hold that no substantial questions of law arises in this appeal. Consequently, this appeal is dismissed.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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