IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

BMA Nos. 36 to 40/MUM/2024
Assessment Years: 2018-19, 2017-18, 2020-21, 2020-21 and 2019-20

Assistant Commissioner of Income Tax, Central Circle -22(1), Mumbai	Vs.	Rohit Krishna, 2602, Subdha CHS, Sir Pochkanwala Lane, Worli, Mumbai - 400 025 (PAN : AKTPK2049Q)
(Assessee)		**(Respondent)**

Present for:

Assessee : Shri Jaiprakash Bairagra, CA
Shri Ashishkumar Bairagra, CA
Ms. Rupa Nanda, CA

Revenue : Shri B.B. Nagawe, Sr. DR

Date of Hearing : 24.09.2024
Date of Pronouncement : 27.11.2024

O R D E R

PER BENCH:

These five appeals filed by the Revenue are against the orders of Ld. CIT(A)-51, Mumbai, dated 17.05.2024 passed against the penalty orders by Deputy Director of Income Tax(Inv.)-4(1), FAIU, Mumbai, u/s. 43 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter referred to as the Act), dated

29.05.2023 for Assessment Years 2018-19, 2017-18, 2020-21, 2020-21 and 2019-20.

2. The sole issue involved in all these appeals is in respect of levy of penalty under section 43 of the act for non-reporting of assets/bank account/investment in schedule FA of the income tax return filed for the respective assessment years by the assessee. Since the issue involved is common, we take up all the 5 appeals together for adjudication by passing this consolidated order.

3. Brief facts of the case are that assessee was resident of India during the years under consideration. It is alleged that assessee had foreign assets being investments with Equatex UK Ltd. (United Kingdom of Great Britain and Northern Ireland) having account No. 1660701 but was not reported in schedule FA (Foreign Assets) of the income tax return filed for the years under consideration, as revealed in the enquiries conducted by the investigation Wing.

3.1. According to the Ld. Assessing Officer, schedule FA was introduced in the return of income from Assessment Year 2012 – 13 by the Finance Act, 2012, making it mandatory for the Indian residents to report about their foreign assets and income generated thereupon in foreign jurisdiction in order to track the same. According to the Ld. Assessing Officer, failure on the part of the assessee to make the said reporting attracted penalty of ₹ 10 lakhs under section 43 of the Act. Ld. Assessing Officer had issued a show cause notice seeking explanation from the assessee to this effect which was replied upon.

3.2. Assessee submitted that he was an employee of Vodafone M-Pesa Ltd and was granted stock options that is ESOPs by the company as part of his employment. Assessee received equity shares of Vodafone Group PLC (foreign listed company of the Vodafone group) which were valued at ₹18,99,873/- by the employer for assessment year 2018-19. These shares were held in an online broking account bearing user ID: 1528635 which was opened by the employer itself to facilitate the allotment of ESOPs. These ESOPs were considered as perquisites in the hands of the assessee which were valued and disclosed as per the provisions of the Income-tax Act, 1961 (the IT Act) in Form No. 12BA issued by the employer. This perquisite was included in annexure to Form 16 – Part B as per section 17(2) of the IT Act. The employer had deducted appropriate and full amount of tax at source (TDS) on the value this of perquisite. According to the assessee, since the entire amount of ESOP is fully taxed by way of TDS and which has been disclosed and offered to take under the head income from salary in his return form, it does not fall within the definition of 'undisclosed asset located outside India' as per section 2(11) of the Act. A reference was also made to definition of assessee under section 2(2) of the Act and to the preamble of the Act to describe its objectives. The same are extracted below for ease of reference:

i. *The preamble of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (BMA), describes the objective of the Act to be make provisions to deal with the problem of the Black money that is undisclosed foreign income and assets, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto."*

ii. *Section 2(2) of the BMA, defines an assessee as "(2) "assessse" means a person, being a resident other than not ordinarily resident in India within the meaning of claute (6) of section 6 of the Income tax Adler-wlwm tus in respect of undisclosed foreign income and assets, or any other payable*

under this Act and includes every person who is deemed to be an assessee in default under this Act"

iii. *Section 2(11) of the BMA, defines an undisclosed asset located outside India as "(71) "undisclosed asset located outside India" means an asset (including financial interest ell any exp located outside India, held by the assessee in his name or in respect of which he is a beneficial owner and he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory"*

3.3. It was thus contended that the Act applies solely to undisclosed foreign income and assets and that assessee does not fall within the above referred provisions.

3.4. Further, assessee submitted that he had adequately disclosed his assets and liabilities in schedule AL of the income-tax return form which included value of these ESOPs under the head “shares and securities”. It was thus claimed that since assessee had disclosed the entire amount of income by way of perquisite received as ESOPs and has paid the full amount of tax on such income, there is no occasion for imposing penalty under section 43 of the Act. Summary of disclosures made by the assessee is tabulated as under for which relevant documents are placed in the paper book on record:

Particulars	**A.Y. 2017-18 (Page no. of Paperbook)**	**A.Y. 2018-19 (Page no. of Paperbook)**	**A.Y. 2019-20 (Page no. of Paperbook)**
Form 16	55	145	220
ITR	29-54	119 – 144	190 – 219
Schedule AL	54	152	230

Particulars	A.Y. 2020-21 (Page no. of Paperbook)	A.Y. 2021-22 (Page no. of Paperbook)
Form 16	109	274
ITR	30 – 62	184 – 222
Updated ITR	66 – 108	226 – 273
Schedule AL	130	284

3.5. Attention was invited to the provisions of section 43 of the Act according to which assessee contended that section does not specify that details of foreign assets must be disclosed in particular schedule, that is Schedule FA as alleged, of the income-tax return form. Assessee was under a bonafide belief that he is not supposed to disclose his foreign assets in any separate schedule such as schedule FA when the same had already been adequately disclosed in schedule AL as part of his assets and liabilities. According to the assessee, levy of penalty under section 43 is not mandatory but is at the discretion of the Assessing Officer since the word used in the said section is that Assessing Officer "may" levy penalty. It was submitted that legislature has given discretionary power to the Ld. Assessing Officer to decide the levy of penalty after considering all relevant factors including the purpose and object, the Act seeks to achieve. The discretion to impose a penalty puts the ld. Assessing Officer under a corresponding obligation to exercise the said discretion by taking into account the facts and circumstances of the case, holistically. Provisions of section 43 of the Act are extracted below:

> *"If any person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act, who has furnished the return of income for any previous year under sub-section (1) or sub-section (4) or sub-section (5) of section 139 of the said Act, fails to furnish any information or furnishes inaccurate particulars in such return relating to any asset (including financial interest in any entity) located outside India, held by*

him as a beneficial owner or otherwise, or in respect of which he was a beneficiary, or relating to any income from a source located outside India, at any time during such previous year, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum often lakh rupees:

Provided that this section shall not apply in respect of an asset, being one or more bank accounts having an aggregate balance which does not exceed a value equivalent to five hundred thousand rupees at any time during the previous year."

3.6. Assessee placed reliance on the decision of the Hon'ble Apex Court in the case of Hindustan Steel Ltd. vs State of Orissa (1972) 83 ITR 26(SC) which held that an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

3.7. Assessee thus submitted that-

1) He has fully disclosed the income earned in the form of ESOP (shares of a foreign company) which itself is the foreign asset
2) No further tax is payable on such income
3) This asset is generated out of the income, which is fully disclosed and taxed in India in the same assessment year

4) He has disclosed, beyond doubt, the source of investment in such asset. He has furnished the relevant information and particulars to the extent required to be submitted in the tax return
5) It is not a case of malafide intention of not disclosing either the income or the asset

3.8. In respect of Assessment Years 2020-21 and 2021-22, assessee submitted that in addition to the above tabulated disclosures, he had filed updated returns u/s 139(8A) of the IT Act wherein all the details are furnished in Schedule FA. These were filed on 30.09.2022 for Assessment Year 2020-21 and on 12.10.2022 for Assessment Year 2021-22, copies of which are placed in the paper book. Thus without prejudice to the submissions made of the three assessment years, in these two assessment years, the specific requirement alleged by the ld. Assessing Officer is duly complied with and therefore penalty so levied is not justified.

3.9. Assessee placed strong reliance on the decision of Coordinate Bench of ITAT Mumbai in his own case for the preceding Assessment Year 2016-17 in BMA No. 11/M/2024 dated 26.08.2024 which had dealt with the identical issue on identical fact pattern as in the present five cases before us. This decision in turn placed reliance in the case of Ocean Diving Centre Ltd. v. CIT in BMA No. 22/M/2023 dated 30.08.2023 as well as in the case of Hindustan Steel Ltd. v. State of Orissa (supra) by the Hon'ble Supreme Court. The observations and finding arrived by the Coordinate Bench in assessee's own case for Assessment Year 2016-17 are extracted below for ease of reference:

> *"8. We have heard the parties and perused the material available on record and given thoughtful considerations to the rival claims of the parties. Admittedly, the Assessee has not disclosed the foreign assets in particular schedule i.e. FA Schedule, however, it is a fact that the Assessee has duly disclosed the foreign assets i.e. ESOP and its value in "Schedule AL" of the income tax return and the*

employer of the Assessee has also deducted the TDS on the value of the foreign asset/ESOP and shown the details/value of the same in Form No.16 Part-B as well as in Form No.12BA. Hence, it cannot be said that the Assessee has not disclosed the foreign assets in any manner. The Hon'ble Co-ordinate Bench of the Tribunal in the case of M/s. Ocean Diving Centre Ltd. vs. CIT BMA No.22/M/2023 & ors. decided on 30.08.2023 has also considered almost the similar circumstances, wherein though the Assessee has not disclosed the foreign assets in Schedule FA but in fact disclosed the same in its balance sheet and schedule part-A-BS under "non-current investments" attached with the return of income and therefore the Co-ordinate Bench considering the fact that the Assessee has disclosed the foreign assets may not be in form FA but otherwise in its return of income ultimately held that the penalty is not warranted. For brevity and ready reference, the conclusion drawn by the Hon'ble Co-ordinate Bench of the Tribunal is reproduced herein below".....

.....8.1 Hence, considering the aforesaid facts and circumstances of the case, as it is not the case of the Revenue Department that the foreign asset/ESOP remained undisclosed entirely and there was malafide intention or ulterior motive for hiding the foreign assets from disclosing; and as the Hon'ble Apex Court in the case of Hindustan Steel Ltd. has laid down the dictum that simply on the technical or venial breach of the law the penalty is not automatically leviable; the judgment of the Hon'ble Co-ordinate Bench of the Tribunal in the case referred to above, wherein the Co-ordinate Bench dealt with the identical situation and ultimately deleted the penalty; hence we are inclined to delete the penalty under consideration. Thus, the same is deleted."

4. Before us, ld. Counsel for the assessee has placed reliance on long line of judicial precedents by the various coordinate benches, especially that of ITAT Mumbai, on the issue being dealt here in these appeals to assert the contentions of the assessee and bring clarity on the subject matter by pointing out change in stand taken on different occasions by the same author / co-author. The same are listed as under in the chronology of their date of pronouncement.

Sr. No.	**Name of the parties**	**BMA Number**	**Date of pronouncement**
i)	ACIT vs. Tejal Ashish Mehta	5/Mum/2022	03.04.2023
ii)	Aditi Avinash Athavankar vs. CIT	16 to 19/Mum/2023	10.07.2023

iii)	Nirmal Bhanwalal Jain Vs. CIT	13 to 15/Mum/2023	31.07.2023
iv)	Shobha Harish Thawani vs. JCIT	01 to 03/Mum/2023	09.08.2023
v)	CIT vs. Shrem Alloys Pvt. Ltd	08 to 11/Mum/2023	29.08.2023
vi)	Ocean Diving Centre Ltd. vs. CIT	24 to 27/Mum/2023	30.08.2023
vii)	Harshita Nirmal Jain vs. CIT	28/Mum/2023,	18.01.2024
viii)	Addtl.CIT vs. Manoj Mahendrakumar Pandya	6/Mum/2024	26.06.2024
ix)	Rohit Krishna vs. CIT	11/Mum/2024	26.08.2024

5. For each of the above decisions, ld. Counsel for the assessee pointed out their key aspects including facts, judicial precedents relied upon, observations and findings arrived therein. The same are narrated seriatim to gain a meaningful and purposive perspective on the issue involved.

<u>i) ACIT vs. Tejal Ashish Mehta in BMA No. 5/Mum/2022, dated 03.04.2023</u>

a. In this case, assessee had a life insurance policy of a foreign company, whose surrender value was declared u/s. 59 of the Act on which tax and penalty were paid. Declaration was made under one time compliance scheme which was accepted by the Revenue. According to

the assessee, receipts on account of surrender were declared in the return of income in Schedule EI. Assessee was under bonafide belief that since policy was surrendered and was no more in existence, there was no requirement to disclose it in Schedule FA. On these set of facts, it was observed that for an asset ceased to exist on account of surrender and its maturity amount was duly reflected in income tax return thus bonafide mistake of not disclosing in Schedule FA is a reasonable cause for deleting the penalty. Reference was made to the decision of coordinate bench of ITAT of Mumbai in the case of ACIT vs. Leena Gandhi Tiwari in 136 taxmann.com 409 (Mum), dated 29.03.2022. Thus, penalty was deleted and appeal by Revenue was dismissed.

ii) Aditi Avinash Athavankar vs. CIT in BMA Nos.16 to 19/Mum/2023, dated 10.07.2023

b. In this case, husband of the assessee made investment in foreign asset with second name of the assessee as a second holder for administrative convenience. Assessee had not contributed any amount towards the said investment. She was under bonafide belief that being a secondary owner, there is no requirement to furnish the details in Schedule FA. At the same time, husband of the assessee had declared the said investment in Schedule FA in his return of income. His case was taken up for scrutiny assessment and was completed accepting the returned income. Reliance was placed on the decision of Coordinate Bench of ITAT, Mumbai in Leena Gandhi Tiwari (supra). On these set of facts, it was observed that section 43 uses the words “the Assessing Officer may direct” which would mean that power of Assessing Officer to impose penalty is discretionary and not mandatory. Non-disclosure in assessee’s return was considered as bonafide mistake since required disclosure was made in the return of income of husband of the assessee. There was no intention to evade tax on this account. Reliance was also

placed on the decision of Hon'ble Supreme Court in the case of Hindustan Steel Ltd. (Supra). On the use of word "may" in section 43 for levy of penalty, it was observed that it is necessary to find out from the scheme of the Act, the intention of the legislature for which reference was made to the speech of the then Hon'ble Finance Minister given while introducing the Act. Thus, after considering all these facts and law, it was concluded that Assessing Officer was not justified in exercising the discretionary power just because it would be lawful to do so. According to the decision, the discretionary power would have to be exercised having regard to facts of each case in a fair, objective and judicious manner and the intention of the legislation. It was noted that intention behind the introduction of the Act is mainly to track and bring into the tax net the undisclosed black money stashed abroad. Thus, on bonafide intentions of the assessee, penalty was deleted and appeal of the assessee was allowed.

iii) Nirmal Bhanwalal Jain Vs. CIT in BMA Nos. 13 to 15/Mum/2023, dated 31.07.2023

c. In this case, assessee had made investments in offshore funds in his own name and in the name of his children including Harshita Jain (daughter) and other two minors. Assessee had disclosed investments made in his own name in Schedule FA in the return of income filed for Assessment Year 2016-17. However, investments made in the name of children inadvertently remained to be disclosed. Also, assessee due to oversight failed to mention increase in investment value in the Schedule FA against his own name. Assessee claimed it to be a bonafide mistake and placed reliance on the decision of Leena Gandhi Tiwari (Supra). By referring to the intent of the Act, it was observed that it is mandatory on the part of the assessee to report investments/assets held outside India. It was also observed that there is furnishing of inaccurate

particulars of investments and that claim of bonafide mistake is unsubstantiated.

c.1. It was held that though the contentions of the assessee may be true, but penalty u/s.43 of the Act is levied for nonreporting which appears to be relentless but leaves no scope of gateway to delete the same even if overseas investment are made from known sources but not reported in Schedule FA of return of income. It was also stated that facts in the case of Leena Gandhi Tiwari (supra) are distinguishable. Penalty levied was upheld and appeal of the assessee was dismissed.

iv) Shobha Harish Thawani vs. JCIT in BMA Nos. 01 to 03/Mum/2023, dated 09.08.2023

d. In this case, assessee invested in foreign asset from her Indian bank account through liberalised remittance scheme under the Foreign Exchange Management Act along with her husband in Global Dynamic Opportunity Fund with 40% share of the assessee. According to the assessee, source of the foreign investments stood explained and income arising therefrom was offered to tax. Assessee submitted that in the return filed for Assessment Year 2019-20, foreign assets were duly disclosed. Owing to inadvertent mistake, assessee referred to discretionary power u/s 43 of the Act in the context of the words “may levy penalty” and relied on the decision of Leena Gandhi Tiwari (supra). It was observed that since foreign asset has not been disclosed in the return of income in Schedule FA, the Assessing Officer exercised his discretion judiciously. It was concluded that provisions of section 43 does not provide any room not to levy penalty even if the foreign asset is disclosed in books since penalty is levied only towards non-disclosure of foreign assets in Schedule FA. Penalty was thus confirmed and appeal of the assessee was dismissed.

v) CIT vs. Shrem Alloys Pvt. Ltd., in BMA Nos. 08 to 11/Mum/2023, dated 29.08.2023

e. In this case, assessee declared its foreign asset in the return filed u/s.153A of the IT Act. However, due to oversight requisite details were not filed in Schedule FA in the return filed u/s.139(1) of the IT Act. It was also claimed that investment was made in Assessment Year 2012-13 which was duly disclosed in the return of income and income therefrom offered to tax. Reliance was placed on decision in the case of Hindustan Steel Ltd. (supra). It was observed that at the initial stage i.e., in Assessment Year 2012-13, investment made was disclosed in Schedule FA but not disclosed in Schedule 'Holding Status'. It was also observed that disclosure was made in the return filed in response to the notice u/s.153A of the IT Act which was treated at par with the return u/s.139 of the IT Act. It was held that case of the assessee is not of deliberate or malafide or dishonest action or non-action or breach or defiance or disregard of statutory provisions of law. Penalty was deleted and appeal of Revenue was dismissed.

vi) Ocean Diving Centre Ltd. vs. CIT in BMA Nos. 24 to 27/Mum/2023, dated 30.08.2023

f. In this case, assessee had invested in foreign entities, inadvertently not reflected in Schedule FA but duly disclosed in the balance sheet in Schedule 'Part A-BS' under 'non-current investments'. Observations were made in respect of discretionary powers in section 43 of the Act by the use of the word 'may'. Reliance was placed on the decision of Hindustan Steel Ltd., (supra). It was held that it is not a case of total defiance or malafide or dishonest, breach/non-disclosure of information of foreign investment in Schedule FA. Penalty was deleted and appeal of the assessee was allowed.

vii) Harshita Nirmal Jain vs. CIT in BMA No. 28/Mum/2023, dated 18.01.2024

g. It is a case where father, i.e., Shri Nirmal Jain (case dealt at Sr. No. iii) of the assessee made investment in the Global Dynamic Opportunities Fund in the name of his daughter out of his own income and capital. Part disclosure was made by the father in his return in Schedule FA. It was claimed that the entire investment was made from disclosed tax paid funds of the father. Assessee was under bonafide belief that since investment was made by her father, she was not required to make the disclosure in Schedule FA in her return of income for which no malafide can be attributed to the assessee for levy of penalty. Reliance was placed on the decision of Adithi Avinash Athavankar [supra- Sr. No.ii) above]. It was thus, held in favour of the assessee considering the bonafide belief and the penalty was deleted.

viii) Addl. CIT vs. Manoj Mahendrakumar Pandya in BMA No.6/Mum/2024, dated 26.06.2024

h. In this case, investment made in foreign asset was not disclosed in Schedule FA of the return of income for Assessment Year 2016-17 but was made in earlier and subsequent years. Assessee claimed bonafide inadvertent clerical mistake about non-reporting only in Assessment Year 2016-17 and relied on the decision of Leena Gandhi Tiwari (supra). He also placed reliance on the decision of Shrem Alloys [supra- Sr. No.v) above]. By following the judicial precedents, it was held to be not a fit case for penalty and appeal of the Revenue was dismissed.

ix) Rohit Krishna vs. CIT (supra – assessee's own case)

i. This has already been discussed in the above paragraphs, wherein decisions of Ocean Diving Centre (supra – Sr. No.vi above) and

Hindustan Steel Ltd. (supra) were relied upon, giving relief to the assessee.

6. Ld. Counsel for the assessee strongly submitted that existence of discretionary power u/s.43 of the Act by the use of the words 'may levy penalty' is well founded. Intention behind introduction of the Act is mainly to track and bring into tax net the un-disclosed black money stashed abroad. For exercising the discretion, object of the law must be clearly borne in mind. Legislature has given discretionary power to the Assessing Officer to decide levy of penalty after considering all relevant factors including purpose and object, the statute seeks to achieve. This discretion puts the Assessing Officer under a corresponding obligation to exercise the said discretion with proper regards to the facts and circumstances of the case holistically. Bonafide intentions of the assessee based on prima facie evidences should not be doubted for invoking the stringent provisions of section 43 for levying penalty. He further submitted that when there are contradictory views on the same issue, the view in favour of the assessee is to be adopted considering the decision of Hon'ble Supreme Court in the case of Vegetable Products, (1973) 88 ITR 192 (SC).

7. Case of the Revenue is that provisions of the Act are strictly applicable and assessee is mandatorily required to disclose foreign assets in Schedule FA, failure of which would lead to imposition of penalty. According to ld. Sr. DR, disclosure of foreign asset in the return is not merely technical requirement without any purpose. It enables the Department to ensure proper investigation. Hence, its nondisclosure is to be viewed with disfavour.

8. We have heard both the parties and perused the material placed on record. We have also given our thoughtful consideration to provisions of the Act and long line of judicial precedents discussed above. Admittedly, assessee did not disclose his foreign asset in particular Schedule, i.e., Schedule FA though the same was duly disclosed in the Schedule AL in the item 'shares and securities' in the Income tax return. Further, assessee had offered perquisite value of the foreign asset, i.e., ESOPs in his return of income which was subjected to tax by way of TDS. Further, in the course of impugned proceedings, assessee had offered all the details and explanations corroborated with documentary evidences in respect of foreign asset. Also, for Assessment Years 2020-21 and 2021-22, assessee had filed updated return u/s.139(8A) of the IT Act duly disclosing the details of foreign asset in Schedule FA.

8.1. We also take note of the provisions of section 43 of the Act as well as the preamble to the said Act to understand the discretionary power vested with the Assessing Officer for imposition of penalty vis-à-vis object sought to be achieved keeping in mind the legislative intent. The purpose of reporting requirement of foreign assets/income in Schedule FA of the Income tax return is for tracking and monitoring the investments held abroad by the residents of India. Preamble to the Act describes its objective to deal with problem of black money, i.e., undisclosed foreign income and assets. The said Act must not be invoked for punishing a technical /venial /bonafide breach of any statutory obligation and therefore bonafide actions of the tax payers must be excluded from the application of provisions of this stringent legislation. In this regard, we draw our force from the decision of Hon'ble Supreme Court in the case of Hindustan Steel Ltd. (supra).

8.2. Accordingly, considering the facts and circumstances of the case as discussed above, admittedly it is not a case where foreign asset remained undisclosed in entirety and that there is any malafide intention or ulterior motive on the part of the assessee for not disclosing the same. Also, taking into account, detailed discussions on long line of judicial precedents referred by the ld. Counsel, we delete the penalty in all the five appeals under consideration before us. Accordingly, grounds taken by the Revenue in this respect are dismissed.

9. In the result, all the five appeals of the Revenue are dismissed.

Order is pronounced in the open court on 27 November, 2024

Sd/-	Sd/-
(Pavan Kumar Gadale)	(Girish Agrawal)
Judicial Member	Accountant Member

Dated: 27 November, 2024

MP, Sr.P.S.

Copy to :

1 The Assessee
2 The Respondent
3 DR, ITAT, Mumbai
4 Guard File
5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai