

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, AHMEDABAD

(through web-based video conferencing platform)

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT  
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No. 2940/Ahd/2017  
Assessment Years : 2012-13

Assistant Commissioner of Income-tax, Panchmahal Circle, Godhra	Vs	Ms. Grishmaben M. Solanki, Rajmahal Road, Devgarh Baria, Panchmahal, Gujarat-389380 PAN : CYOPS 3860 E
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Revenue by :		Shri C.S. Sharma Sr. DR
Assessee by :		None

सुनवाई की तारीख/Date of Hearing : 15/02/2022  
घोषणा की तारीख /Date of Pronouncement: 16/02/2022

**आदेश / O R D E R**

**PER P.M. JAGTAP, VICE-PRESIDENT :**

This appeal is preferred by the Revenue against the order of the learned Commissioner of Income-tax (Appeals)-4, Vadodara ("CIT(A)" in short) dated 20.09.2017 whereby he cancelled the penalty of Rs.56,56,420/- imposed by the Assessing Officer under Section 271(1)(c) of the Income-tax Act, 1961 ("the Act" in short).

2. The assessee in the present case is an individual who derives income from investments. The return of income for the year under consideration was filed by her on 26.10.2012 declaring total income of Rs.18,04,070/-. In the said return, Long Term Capital Gain of Rs.17,14,940/- arising from the sale of immovable properties was declared by the assessee. While computing the said Long Term Capital Gain, the sale consideration of the immovable properties was taken by the assessee at Rs.1,79,48,414/- as against the Stamp Duty Valuation (Jantri Value) of Rs.3,62,53,993/-. In this regard, it was explained by the assessee during the course of assessment proceedings before

the learned Assessing Officer that the Stamp Duty Valuation was challenged by her on the basis of situation & location of land, surface position of land, quality of soil, frontage and interiority etc.. This explanation of the assessee was not found acceptable by the Assessing Officer; and, adopting the Stamp Duty Valuation of Rs.3,62,53,993/- as sale consideration by invoking the provisions of Section 50C of the Act, he recomputed the Long Term Capital Gain at Rs.2,00,20,519/- and made an addition of Rs.1,83,05,579/- to the total income of the assessee on account of Long Term Capital Gain in the assessment completed under Section 143(3) of the Act vide order dated 11.02.2015. He also initiated penalty proceedings under Section 271(1)(c) of the Act; and, since the explanation offered by the assessee in response to the show-cause notice issued during the course of penalty proceedings was not found acceptable by him, the Assessing Officer proceeded to impose a penalty of Rs.56,56,420/- under Section 271(1)(c) of the Act being the amount equivalent to the 100% of the tax sought to be evaded by the assessee. The Assessing Officer also took into consideration of the fact that the addition made by him in the assessment proceedings on account of Long Term Capital Gain was accepted by the assessee and there was no appeal filed in the quantum proceedings.

3. The penalty imposed by the Assessing Officer under Section 271(1)(c) of the Act was challenged by the assessee in an appeal filed before the learned CIT(A); and, after considering the submissions made on behalf of the assessee as well as the material available on record, the learned CIT(A) cancelled the penalty imposed by the Assessing Officer under Section 271(1)(c) of the Act for the following reasons given in paragraph 3.3 of his appellate order dated 20.09.2017:-

*“3.3. I have considered the submissions of the learned Authorized Representative and the order of the Assessing Officer. The only issue is regarding penalty levied u/s. 271(1)(c) of the Act on account of difference in Long Term Capital Gain. The A.O. observed that the assessee was in agreement with the valuation and consequent addition on account of LTTCG. By agreeing to the additions the assessee is not absolved from its culpability and as per IT Act*

*mens-rea is not required to be proved by the Revenue. Hence, no disclosure of true income in original return construes furnishing inaccurate particulars of income.*

*During the course of appellate proceedings, the A.R of the appellant has filed written submission. The appellant has shown LTCG in respect of sale of various immovable properties for a sale consideration of Rs.1,79,48,414/-, The A.O. has taken actual market rate [Jantri Value) of Rs.3,62,53,993/-.*

*The only concern for the A.O. was that the appellant has not made any objection to excessive valuation and has accepted the addition during the course of assessment proceedings. The A.O. cannot take advantage of ignorance of law. Even, the appellant has filed written submission on 03.07.2015 during assessment proceedings and without giving any finding only based on actual sale consideration as admitted in the sale agreement does not amount to concealment of income or furnishing inaccurate particulars of income. There is a force in the argument of the A.R. of the appellant that merely because for the purpose of stamp duty property valued at a higher cost it cannot be said that the assessee has received higher payment. The A.R. relied in the case of (i) Hon'ble Supreme Court in the case of Khoday Eswardsa & Sons 83 ITGR 369 (ii) Ananthararn Veerasinghaiah & Co Vs CIT 123 ITGR 457 (S.C) (iii) CIT Vs Madan TGheateres Ltd 88 DTR 217 (iv) CIT Vs. Vijayjyot Seats Pvt Ltd. Tax Corp 61569 (v) Renu Hingorani Vs ACIT ITA No.2210/Mum/2010 & various other relevant judicial pronouncements.*

*In the case of Madan Theatares Ltd Vs CIT (2014) 44 taxmann.com 382 (Calcutta), it was held that "Section 271(1)(c), read with section 50C of the Income-tax Act, 1961, Penalty for concealment of income, Where actual amount received on account of sale of property was offered for taxation but Assessing Officer invoking section 50C deemed sale consideration at higher sum, in absence of any iota of evidence that assessee had received more amount than that shown by it, penalty under Section 271(1)(c) was not leviable.*

*The assessee can challenge the view of the A.O. if there is a dispute in the valuation adopted during the course of assessment proceedings. The fact remains that the actual amount received was offered for taxation. The A.O. has failed to produce any iota of evidence that the assessee actually received more than the amount shown to have been received by her. After considering the surrounding circumstances and applying the test of human probabilities, one has to reasonably conclude that the plea of the assessee is genuine. The penalty proceedings are independent from the assessment proceedings and it is not continuation of assessment proceedings. In the penalty proceedings, the A.O. has to be satisfied that the assessee has concealed the particulars of her income or furnished inaccurate particulars of such income. In other words, it must be, at the outset established that the amount which is said to have been concealed or not disclosed by the assessee in her return of income, constitute the income of the assessee. However, the Assessing Officer has not considered the explanation*

offered by the assessee as bona fide and simply rejected the explanation by saying that the assessee has made a wrong claim in the original return; it is the duty of the A.O. to establish that the assessee has concealed income or furnished inaccurate particulars of income. The present case is directly covered by the decision of ITAT, Ahmedabad ITA No.508/Ahd/2010 (A.Y.2006-2007) in the case of Shri Chimanlal Manilal Patel Vs ACIT wherein penalty was deleted on the addition made u/s 50C of the Act.

In the present case, the A.O. has accepted the amount offered by the assessee as her income and levied penalty without making any enquires and investigation to disprove that the explanation given by the assessee is either false or bona fide. Therefore, it is my considered view that the penalty cannot be levied in the present case when the appellant disclosed all material facts truly and wholly. Merely because the assessee agreed for addition on the basis of valuation made by the Stamp Valuation Authority would not be a conclusive proof that the sale consideration as per this agreement was incorrect and wrong. Accordingly the addition because of the deeming provisions does not ipso facto attract the penalty u/s 271(1) (c). Hence in view of the decision of the Hon'ble Supreme Court in the case of CIT V/s Reliance Petroproducts Pvt Ltd. [2010] 322 ITR 158 (SC) and Chimanlal Manilal Patel (Supra), the penalty levied u/s 271(1)(c) is not sustainable. The same is deleted. Thus, the appellant succeeds on this count."

4. Aggrieved by the order of the learned CIT(A), the Revenue has referred this appeal before the Tribunal on the following grounds:-

1. The appeal order passed by CIT(A) is bad in law, illegal and void, as the appeal order is passed by CIT(A) without considering the delay in filing of appeal and no order for condonation of delay has been passed by CIT(A).
2. On the facts and In the circumstances of the case, the learned CIT(A) erred in deleting the penalty of Rs. 56,56,420/- levied u/s 271(1)(c) of the I.T. Act, overlooking the fact that the assessee had furnished inaccurate particulars of income of Rs.1,83,05,579/-, further he failed to substantiate that he had not received this amount, mens rea is not required to be proved by the Revenue.
3. The Ld. CIT(A) ought to have upheld the action of the Assessing Officer in levying penalty u/s 271(1)(c) on the disallowance made on account of difference in LTCG in view of the clear cut provisions of the Act that valuation of immovable property has to be done as per deeming provisions u/s 50C of the Act and LTCG arising thereof has to be determined accordingly for the purpose of computation of income, which clearly says that whatever difference is there is concealed income and leviable for penalty u/s 271(1)(c) of the IT Act.

5. At the time of hearing fixed in this case none has appeared on behalf of the respondent-assessee. Even the notice sent to the assessee at the address available on record has come back undelivered from the Postal Authority with the remark "left". It is noted that there was similar non-compliance on the part of the assessee when this appeal was fixed for hearing on the earlier occasions. This appeal of the Revenue is, therefore, being disposed of *ex-parte* qua the respondent-assessee, after hearing the arguments of the learned Departmental Representative and perusing the relevant material available on record.

6. Apropos the issue raised in Ground No.1, the learned Departmental Representative has pointed out from the copy of Form No.35 filed by the assessee before the learned CIT(A) that the relevant notice of demand for penalty imposed under Section 271(1)(c) of the Act was served on the assessee on 21.03.2016. As per the specific provision contained in sub-section (2)(b) of Section 249 of the Act, the assessee was required to file the appeal before the learned CIT(A) against the order of penalty under Section 271(1)(c) of the Act within 30 days from the date of service of the notice of demand relating to the penalty. It is, however, noted from the impugned order of the learned CIT(A) that the appeal was filed by the assessee only on 20.06.2016, i.e. beyond the period prescribed in sub-section 2 of Section 249 of the Act. As rightly contended by the learned Departmental Representative, the learned CIT(A), however, failed to take note of this delay and proceeded to dispose of the appeal of the assessee vide his impugned order on merit without passing any order on the issue of condonation of delay. We, therefore, find merit in Ground No.1 of the Revenue's appeal and remit the matter back to the learned CIT(A) for considering the issue of delay on the part of the assessee in filing the appeal and passing the order on this preliminary issue, in accordance with law, after giving the assessee an opportunity of being heard.

7. Since the preliminary issue relating to the condonation of delay in filing the appeal has been remitted by us to the learned CIT(A) while allowing

Ground No.1 of the Revenue's appeal, we do not consider it expedient to adjudicate upon the issues raised in Ground Nos. 2 & 3 relating to levy of penalty under Section 271(1)(c) of the Act on merit.

8. In the result, the appeal of the Revenue is treated as partly allowed for statistical purposes.

Order pronounced in the Court on 16<sup>th</sup> February, 2022 at Ahmedabad.

Sd/-

**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

Ahmedabad, Dated 16/02/2022

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file

TRUE COPY

Sd/-

**(P.M. JAGTAP)**  
**VICE-PRESIDENT**

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण  
ITAT, Ahmedabad