

आयकर अपीलीय अधिकरण, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES 'H' MUMBAI
सर्वश्री आय.पी. बंसल, न्यायिक सदस्य एवं श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।
BEFORE SHRI I.P. BANSAL, JUDICIAL MEMBER /AND
SHRI SANJAY ARORA, ACCOUNTANT MEMBER

ITA NO.6383/MUM/2012, A.Y. 2007-08.

Harish Voovaya Shetty,
Sujata Refreshments,
Gokhale Road Junction,
Gokhale Road, Dadar (W),
Mumbai 400028
PAN: AAIPS 6199L
(Appellant)

Vs.
(Respondent)

Appellant by : Shri Subhash S.Shetty
Respondent by : Shri Pitamber Das

Date of hearing : 03/07/2014
Date of pronouncement : 03/07/2014

ORDER

PER I.P.BANSAL, J.M,

This appeal is filed by the assessee. It is directed against order passed by Ld. CIT(A)-29, Mumbai dated 3/7/2012 for assessment year 2007-08. Grounds of appeal read as under:

1. *The order passed by the learned Commissioner of Income-Tax (Appeals) confirming the penalty of Rs. 2,27,800/- levied under section 271(1)(c) of the Income tax Act, 1961 by the assessing officer is unjustified, illegal and had in law.*
2. *The order passed by the learned Commissioner of Income-Tax (Appeals) is required to be quashed in as much as the same is passed without giving a proper opportunity of being heard to the appellant.*
3. *The learned Commissioner of Income-Tax (Appeals) committed a gross error of law and fact in coming to the conclusion that the appellant filed inaccurate particulars and therefore liable for the impugned penalty on the ground that it was*

mandatory on the part of the appellant to adopt the value computed by the stamp authorities as the sales consideration received on the transfer of the immovable property.

4. The learned Commissioner of Income-Tax (Appeals) committed a gross error in not appreciating that the valuation as per section 50C may be deemed to be the sales consideration for the purpose of computation long term capital gains but can not be the basis for levy of penalty under section 271(l)(c) of the Act.

2. During the year under consideration the assessee had sold his 50% share in the property of plots of land bearing City Survey No.4645, 4643 & 4606 admeasuring 604 sq. meters, 13.07 sq. meters and 65.06 sq. mters respectively to Mrs. Varakshini C. Shetty in the Village Mira, Tal: Thane for a sale consideration of Rs.4,50,000/-. The said plot of land was valued for Stamp Duty purposes at Rs.15,89,000/-. Applying section 50C of Income Tax Act, 1961 (the Act) the difference between sale price and Stamp Duty value was considered for the purpose of computation of capital gain. On such difference impugned concealment penalty has been levied, which is calculated at Rs.2,27,800/- being 100% of the tax sought to be evaded. The levy of penalty has been confirmed by Ld. CIT(A).

3. At the time of hearing it was submitted by Ld. AR that this issue is covered by the decision of ITAT Mumbai Benches in the case of Renu Hingorani vs. ACIT vide order dated 22/12/2010 in ITA No.2210/Mum/2010, wherein penalty levied under section similar circumstances was cancelled with the following observations:

“8. We have considered the rival contentions and relevant record . We find that the AO had made addition of Rs.9,00,824/- being difference between the sale consideration as per sale agreement and the valuation made by the Stamp Valuation Authority. Thus, the addition has been made by the AO by applying the provisions of section 50C of the Act. It is evident from the assessment order that the AO has not questioned the actual consideration received by the assessee but the addition is made purely on the basis of deeming provisions of the Income Tax Act, 1961. The AO has not given any finding that the actual sale consideration is more than the sale consideration admitted and mentioned in the sale agreement. Thus, it does not amount to concealment of income or furnishing inaccurate particulars of income. It is also not the case of the revenue that the assessee has failed to furnish

the relevant record as called by the AO to disclose the primary facts. The assessee has furnished all the relevant facts, documents/material including the sale agreement and the AO has not doubted the genuineness and validity of the documents produced before him and the sale consideration received by the assessee. Under these facts and circumstances, it cannot be said that the assessee has not furnished correct particulars of income. 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 (supra), the penalty levied u/s 271(1)(c) is not sustainable. The same is deleted”.

Copy of the aforementioned order was placed on record and was also given to Ld. DR. Ld. AR further referred to the decision of Ahmedabad Bench , which is dated 22/6/2012 in ITA No.508/Ahd/2010, wherein also similar penalty was deleted with the following observations:

5. We have heard the rival contentions and perused the material on record. It is a fact that the addition has been made by the AO in the revisionary proceedings. The addition has been made on the basis of provisions of section 50C. It is not the case of the AO that the assessee has received consideration over and above than that declared in the sales deed. The AO has not disputed the consideration received by the assessee. The addition has been made on the basis of deeming provisions of section 50C. The assessee has furnished all the facts of sale, documents/ material before the AO. The AO has not doubted the genuineness of the documents/details furnished by the assessee. Only because the assessee agreed to the additions because of the deeming provisions it cannot be construed to be filing of inaccurate particulars on the part of the assessee. The assessee agreed to addition on the basis of valuation made by the stamp valuation authority cannot be a conclusive proof that the sale consideration as per the sale agreement is deemed to be incorrect and wrong. In view of these facts we are of the considered view that penalty cannot be levied on the basis of deeming provision. We accordingly delete the same.

3.1 Ld. AR further referred to the decision of CIT vs. Madan Theatres Ltd., 260 CTR (Cal) 75, wherein also Hon'ble Calcutta High Court upheld the order of Tribunal vide which penalty levied on similar issue was deleted with the following observations:

3. *The Revenue preferred an appeal. The learned Tribunal dismissed the appeal holding, inter alia, as follows:*

Thus obviously, it is only on account of deeming provisions of s. 50C, the AO has made the addition by adopting the sale consideration of Rs.5,19,77,000, being the value adopted for the purpose of stamp valuation. The Revenue has also not shown as to how the assessee could be held to have actually received this amount which is in excess of the amount of Rs. 2,51.50,000. It has also not been shown as to whether any corresponding addition has been made in the hands of the buyer. In any case, the issue is also now squarely covered by the decision of the Co-ordinate Bench of this Tribunal in the case of Renu Hingorani (supra). In the circumstances, respectfully following the decision of the Co-ordinate Bench of this Tribunal in the case of Renu Hingorani (supra) as also on account of the fact that the Revenue has not been able to dislodge the findings of the learned CIT(A) that the bona fides of the assessee are genuine, the findings of the learned CIT(A) stand confirmed. In the circumstances, the appeal of the Revenue is dismissed.

4. *Mr. Niamuddin, learned advocate appearing for the Revenue, contended that the assessee had a choice to dispute the valuation on the basis of the deemed value, but the assessee did not take that opportunity. The assessee had a choice or he could have litigated. The fact remains that the actual amount received was offered for taxation. It is only on the basis of the deemed consideration that the proceedings under s. 271(1)(c) started. The Revenue has failed to produce any iota of evidence that the assessee actually received one paise more than the amount shown to have been received by him.*

5. *We are, as such, of the opinion that there is no scope to admit the appeal since the same does (sic.-not) raise any question of law, substantial or otherwise.*

The appeal is, therefore, rejected.

Thus, it was submitted by Ld.AR that impugned penalty should be deleted.

4. On the other hand, Ld. DR submitted that provisions of section 50C was very much part of the statute when assessee filed the return and assessee did not compute his capital gain according to that provisions. Thus, it was a deliberate attempt on behalf of assessee to furnish inaccurate particulars of his income which clearly entail concealment penalty. Ld. DR referred to the following decisions to contend that penalty in such cases is liable to be upheld.

- (a) CIT vs. Zoom Communications Pvt. Ltd., 327 ITR 510
- (b) CIT vs. Escort Finance Ltd., 328 ITR 44

5. We have heard both the parties and their contentions have carefully been considered. If the ratio of the decision relied upon by Ld. AR are considered then they are direct decisions on the issue which pertain to addition made on application of section 50C. According to decision of Hon'ble Calcutta High Court in the case where addition is made on account of application of section 50C and Revenue failed to produce any evidence to the effect that assessee has actually received more amount than that shown by it on the sale of property then penalty under section 271(1)(c) cannot be levied. Therefore, where addition is made on account of application of section 50C and there is no material on record to show that assessee had received more amount than that shown by it on sale of property then penalty under section 271(1)(c) cannot be levied. In the present case also no such case has been made by the Revenue. Therefore, decision of Hon'ble Calcutta High Court is a direct decision on the issues.

5.1 The decisions relied upon by Ld. DR are not directly on the issue and distinguishable on facts. In the case of CIT vs. Zoom Communications Pvt. Ltd.,(supra) a sum of Rs.1,21,49,861/- was debited to administrative and other expenses which was on account of "equipment written off". It was explained by the assessee that due to over sight the said amount was not added back in the computation of income and the same ought to have been adjusted in the block of assets. On these facts, it was held by their Lordships that in absence of assessee company telling the AO as to who committed the oversight resulting in failure to add such amount while computing income of the assessee, under what circumstances the oversight occurred and why it was not detected by those who checked Income Tax return before it was filed and later by the auditors of the assessee company, one cannot accept the general view taken by the Tribunal that the mistake was bonafide mistake. Thus, the facts of that case are entirely

different from the facts of present case and the ratio laid down in Zoom Communications (supra) cannot be applied to the facts of the present case.

5.2 In the case of CIT vs. Escorts Finance Ltd.(supra) the assessee made false claim under section 35D which was not considered to be a claim on which there could be two opinions and thus, the facts of that case are also different from the facts of the present case.

5.3 It is seen that the context in which both the decisions relied upon by Ld. DR have been rendered is entirely different from the context of the present case. The law in this regard is well settled as held by Hon'ble Supreme Court in the case of CIT vs. Sun Engineering Work Pvt. Ltd, 198 ITR 297 (SC) that “ it is neither desirable nor permissible to pick out a word or sentence from the judgment of this Court, divorced from the context of the question under consideration and treated it to be the complete “law” declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the question which were before this Court. A decision of this Court takes its colour from the question involved in the case in which it is rendered and, while applying decision to a later case, the Courts must carefully try to ascertain true principle laid down by the decision of this Court and not to pick out words or sentence from the judgment, divorced from the context of the question under consideration by this Court to support their reasoning.”

5.4 Applying the aforementioned ratio, when there is a direct decision available on the issue, then it will be appropriate to follow the same particularly when no contrary decision on the same very issue is cited by the opposite side.

5.5 In view of above discussions, respectfully following the decision of Hon'ble Calcutta High Court, we hold that penalty in the present case was not justified and the same is deleted.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 03/07/2014

आदेश की घोषणा खुले न्यायालय में दिनांक: 03/07/2014 को की गई।

Sd/-

(संजय अरोड़ा / SANJAY ARORA)

लेखा सदस्य / **ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated 03/07/2014

Sd/-

(आय.पी. बंसल / **I.P. BANSAL**)

न्यायिक सदस्य / **JUDICIAL MEMBER**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

व.नि.स./Vm, Sr. PS