IN THE INCOME-TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI.

Before Shri N.S. Saini, Accountant Member &
Shri S.S. Godara, Judicial Member

I.T.A. No.997/Mds/2012
Assessment Year : 2007-08

Shri C. Basker, S/o V.N. Chokalingam, 2, Channadankoil Road, Karur 639 001. **[PAN:AAAHC1657B]**	Vs.	The Assistant Commissioner of Income Tax, Circle II, Trichy.
(Appellant)		(Respondent)

I.T.A. No.998/Mds/2012
Assessment Year : 2007-08

Shri C. Vijayakumar, S/o V.N. Chokalingam, 3/7-B, Channadankoil Road, AVS & AVR Colony, Karur 639 001. **[PAN:AAAHC1648G]**	Vs.	The Assistant Commissioner of Income Tax, Circle II, Trichy.
(Appellant)		(Respondent)

Appellant by	:	Shri Raghavan Ramabhadran, Advocate
Respondent by	:	Shri Guru Bashyam, JCIT
Date of Hearing	:	09.10.2012
Date of pronouncement	:	12.10.2012

ORDER

PER BENCH

These two appeals filed by different assessees have been preferred against different orders of the Commissioner of Income Tax (Appeals), Tiruchirapalli dated 21.03.2012 passed in ITA No. 119/2010-11 and ITA No. 119/2010-11 respectively; for the assessment year 2007-08, confirming

penalty under section 271(1)(c) of the Income Tax Act 1961 [in short the "Act"]. For convenience and brevity, we take up I.T.A.No. 997/Mds/2012 as the 'lead' case.

I.T.A.No. 997/Mds/2012 :

2. Brief facts of the case are that the assessee had filed 'return' for the impugned assessment year on 03.12.2007 and admitted income of ₹.12,79,230/- along with agricultural income of ₹.60,000/-. Thereafter the assessee filed a revised return on 04.06.2008. It is noticed from the assessment order that this time as well, the total income and agricultural income remained same. In scrutiny proceedings, the Assessing Officer took cognizance of the fact that the assessee had sold immovable property on 30.11.2006, in which he was having ½ share and the other ½ share belonged to his brother namely Shri C. Vijayakumar [assessee's connected case I.T.A. No. 998/Mds/2012] and the assessee in his revised return dated 04.06.2008 had declared the sale consideration of ₹.28,54,200/- for the purpose of computing capital gains. The Assessing Officer noted from the ITS details that the immovable property was valued at ₹.95,40,000/-. The assessee clarified before the Assessing Officer that the said value as noticed by the Assessing Officer was only the guideline value for the purpose of stamp fees and registration. The Assessing Officer did not accept the assessee's explanation and by invoking section 50C(2) of the "Act",

adopted deemed sale consideration as ₹.95,40,000/- and worked out the capital gain as under:

	₹.	
"Sale consideration	95,40,000	
Less: Indexed cost (as returned)	24,89,065	
	70,50,935	
50% share of the assessee	35,25,468	
The capital gains in respect of the above property is assessed at ₹.35,25,468 against ₹.182568/- returned.		
Total income declared by the assessee (other than capital gains)		12,79,220
Capital gains as above		33,42,900
Assessed Income + Agri. income		**46,22,121**
		60,000"

Similarly, notice of penalty under section 271(1)(c) of the "Act was also issued to the assessee. There is hardly any dispute that the assessee did not file any appeal against the above assessment order dated 21.12.2009.

3. In penalty proceedings, the assessee submitted before the Assessing Officer that section 50C has been invoked in the assessment proceedings (supra) was, in fact, a deeming provision only and there had not been any understatement of the actual consideration amount received by him from the vendees in question. Per assessee, merely because of section 50C(2) of the "Act" had been invoked and the assessee did not challenge the assessment order did not mean that it had not disclosed the actual consideration received. The Assessing Officer did not agree to the said explanation tendered by the assessee. By relying on the case law of UOI and others vs. Dharmendra Textile Processors 306 ITR 277 (SC), the Assessing Officer

held that impugned penalty is a civil liability and willful concealment is not an essential ingredient. Accordingly, penalty on a sum of ₹.11,25,220/- was imposed by the Assessing Officer vide order dated 16.06.2010. We also find that the CIT(A) has further confirmed the penalty imposed by holding as follows:

> *"6. The Assessing Officer· in his penalty order has stated that the appellant has filed original return of income on 03.12.2007 who has not disclosed the capital gain earned. The appellant filed a revised return on 04.06.2008 which itself is not a valid revised return as the original return was not filed within the time limit prescribed u/s 139(1). Even in the revised return the appellant has shown capital gains at ₹. 1,82,567 on the basis of the sale consideration stated to be actually received. The assessing officer has made out a clear case against the appellant by stating that he has not declared the capital gains in the original return of income, which itself was not filed within due date. The Assessing Officer has also rejected the appellant's claim that he is innocent or ignorant' of the guideline value on the ground that being a seller the appellant himself signed the documents in the presence of Registering Authority on the stamp paper. The value of the property sold by the appellant is determined on the guideline value of the property and it is invariably mentioned in the document itself before the registration of the sale deed takes place.*
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> *7. Section 50C is a special provision inserted by the Finance Act 2002 w.e.f. 01.04.2003 with a view to tackle unaccounted income generated by the understatement of consideration in the acquisition of property. For working out the capital gains on sale of immoveable property the appellant has to adopt the value determined by the stamp valuation authority. The only option available to the appellant is to file an appeal if the value is considered to be higher or request the Assessing Officer to refer the matter to the Valuation Officer. Since the Assessing Officer has not found it fit to refer the case to departmental valuation cell even though appellant has made request. However, the appellant has not filed any appeal against the decision taken by the Assessing Officer.*
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> *8. The Assessing Officer who passed the penalty order has stated that it is the responsibility of the appellant to declare capital gains transaction as per the value determined by the stamp duty authorities*

and the appellant having known the value of the property determined by the stamp duty authorities fully well, failed to declare correctly and truly. Thereby Assessing Officer has arrived at the decision that the appet!ant has concealed the particulars of income arising out of capital gains computed uls 50C of the Act. The Assessing Officer has also relied on Union of India & Ors. Vs "Dharmendra Textile Processors" (306 ITR 271), wherein it was held that penalty uls 271(l)(c) r.w.s. explanation indicate that this provision is a civil liability and willful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution u/s 271 (1)(c) it was also held that mens rea is not an essential ingredient on the part of the appellant to attract penalty U/S 271(1)(c). The Assessing Officer has also stated further but for that information obtained from the AIR data, correct capital gains u/s 53 of the Income Tax Act, 1961 would have escaped assessment as the appellant has failed to disclose the same either in original return of income or in the revised return of income filed subsequently. The appellant has not voluntarily brought to the notice of the department that the value for stamp duty was higher than the consideration declared in the registered deed. The main issue in this case is that the appellant even in his revised return has not shown the correct value of the property determined under Section 50C and shown only lesser capital gain which tantamounts to furnishing of inaccurate particulars of income. Since the appellant has not availed a great opportunity for showing true and correct value of the property as determined U/S 50C even in the revised return of income filed by him which showed deliberately a lesser short term capital gain at ₹.1,82,567. Since the appellant has missed this opportunity the action of the Assessing Officer in adopting the value of the property sold by the appellant for working out short term capital gain at l 33,42,900 U/S 50C of the Income Tax Act, 1961 is judicious and apt and therefore the action of the Assessing Officer in levying penalty u/s 271(1)(c) is confirmed. The objections filed by the appellant are rejected.

9. In the result the appeal is DISMISSED."

Therefore, the assessee is in appeal.

4. Reiterating the grounds of appeal raised, the AR representing the assessee has vehemently contended that the CIT(A) has erred in confirming the penalty under section 271(1)(c) of the "Act" merely because in

assessment proceedings the Assessing Officer had invoked the deeming provision as enshrined in section 50C(2) of the "Act." It is the contention of the AR that in the absence of any substantive allegation that the assessee received any amount over and above what was stated in the assessment proceedings, the primary condition of furnishing false and inaccurate particulars as mandated under section 271(1)(c) of the "Act" does not stand satisfied. To buttress his plea, he has also submitted compilation of following case law:

"SI.No.	Particulars
1	Special Provision for full value of consideration [Section 50C]
2	Failure to furnish returns, comply with notices, concealment of income, etc. [Section 271]
3	Dr. Ajith Kumar Pandey Vs. Income Tax Appellate Tribunal 2008- TIOL-726-HC-Patna-IT
4	Renu Hingorani Vs. ACIT, Range, 19(3), Mumbai ITA No.2210/Mum/2010
5	Shri. Chimanlal Manilal Patel Vs. ACIT, Surat ITA No.508/Ahd/2010
6	Commissioner of Income Tax, Ahmedabad V s. Reliance Petroproducts Private Limited (2010) 11 SCC 762
7	DCIT, New Delhi Vs. Mis. Japfa Comfeed India Private Limited 2011-TIOL-703-ITAT-DEL
8	Mrs. Asha Bharat Shah Vs. ITO, Mumbai 2011- TIOL-521-ITAT-MUM
9	Bhupatlal Chhaganlal Jariwala-HUF Vs. ACIT, Surat 2011- TIOL-779-ITAT-AHM
10	Smt. Thulsi Rajkumar Vs. ACIT, Coimbatore 2010- TIOL-515-ITAT-MAD
11	Mis. Rumans Industrial Chemical Corpn Vs. ACIT, Mumbai 2009- TIOL-439-IT AT -MUM
12	Mis. Meghraj Baid Vs. ITO Manu/IO/000312008
13	Global Green Company Limited Vs. DCIT, New Delhi ITANo.1390/Del/2011"

During the course of hearing, he has also presented copy of reply of penalty

notice submitted by the assessee as well as the site plan of the property sold to contend that the basic reason for selling the property at throw away price was that the property, in fact, land locked and there were no buyers. Accordingly, he prayed for acceptance of the appeal.

5. The DR representing Revenue has chosen to strongly support the CIT(A)'s order as well as findings contained therein.

6. We have heard both sides at length and also perused the relevant findings as well as case law referred to. The moot issue before us as it arises for consideration in the instant case is whether the CIT(A) has rightly confirmed the penalty imposed under section 271(1)(c) of the "Act" by the Assessing Officer merely on the ground that as per the guideline value adopted under section 50C(2) of the "Act", the actual sale price of the assessee's property sold turned out to be less than guideline value resulting in addition during assessment proceedings?

7. It emerges from the record that the assessee had filed revised return of income which was processed under section 143(1) of the "Act" by the Assessing Officer and the assessment was finalized under section 143(3) of the "Act" vide order dated 21.12.2009 (supra). This whole chronology of the events makes it clear that the assessee's revised return stood duly accepted and finalized by the Assessing Officer. The only addition made by the Assessing Officer was that the consideration as disclosed by the assessee qua the property sold was found to be less than the guideline value, which

was ₹.95,40,000/- instead of ₹.28,54,200/- as mentioned by the assessee. The same ultimately lead to the addition under section 50C(2) (supra). On the same basis, the Assessing Officer issued penalty notice, which culminated in imposition of penalty in question. It is not the case of the Revenue that the assessee had received any consideration over and above what was disclosed. In our opinion, the mere fact that the Assessing Officer had invoked section 50C(2) of the "Act" and adopted guideline value for computing capital gains ignoring what was disclosed by the assessee ipso facto cannot be the sole basis for imposing penalty. It transpires that the assessee is not guilty of furnishing any false and inaccurate particulars regarding the valuation of the property sold for the purpose of computing capital gains. We notice that in case law of Renu Hingorani vs. ACIT (supra), the Coordinate Bench of ITAT Mumbai Bench has held that penalty merely on the basis of invoking section 50C(2) of the "Act" cannot be sustained. The relevant portion of the order is hereby reproduced as under:

> *"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 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.

9. The appeal of the assessee is allowed."

The same law has been reiterated in cases cited by the assessee namely Shri Chimanlal Manilal Patel vs. ACIT and DCIT vs. M/s. Japfa Comfeed India Private Limited (supra).

8. Although not cited by any of the parties, we also deem it appropriate to refer here the case law of the Hon'ble Supreme Court as reported in K.V. Varghese vs. ITO (1981) 131 ITR 597, wherein it held that for the purpose of computation of capital gains under section 52 of the "Act", it has to be necessarily proved that the assessee had received the amount more than what is declared or disclosed as consideration. Their Lordships had also been pleased to observe that the burden on such cases is on the Revenue. When we apply the ratio of the above said case law qua the facts of the present case, we find that there is no allegation against the assessee of any understatement of the value of the property sold. Hence, we hold that

section 50C(2) is only a deeming provision which cannot be taken as to be an understatement for the purpose of imposing penalty.

9. Now we come to the observation of the CIT(A) relying case law of Dharmendra Textile Processors (supra). It is observed that the Hon'ble Bombay High Court in case of CIT vs. M/s. Aditya Birla Nova Limited vide judgment dated 14.08.2012 in Income Tax Appeal No. 3899 of 2010 has distinguished the ratio of the case law of Dharmendra Textile Processors (supra) by holding as under:

> *"10. In support of his submission, Mr.Malhotra relied upon the following observations of the Supreme Court in Union of India & Ors.vs. Dharmendra Textile Processors & Ors. (2008) 13 SCC 369 =(2008) 306 ITR 277 :-*
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> > *"**17.** It is of significance to note that the conceptual and contextual difference between Section 271(1)(c) and Section 276-C of the IT Act was lost sight of in Dilip Shroff case.*
> >
> > ***18.** The Explanations appended to Section 271(1)(c) of the IT Act entirely indicates the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing return. The judgment in Dilip N. Shroff case has not considered the effect and relevance of Section 276-C of the IT Act. Object behind enactment of Section 271(1)(c) read with Explanations indicate that the said section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability. Wilful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under Section 276-C of the IT Act.*
> >
> > ***19.** In Union Budget of 1996-1997, Section 11-AC of the Act was introduced. It has made the position clear that there is no scope for any discretion. In Para 136 of the Union Budget reference has been made to the provision stating that the levy of penalty is a mandatory penalty. In the Notes on Clauses also the similar indication has been given."*

11. The judgment does not support Mr.Malhotra's submission that even if an assessee has disclosed all the particulars of his income and has not furnished inaccurate particulars of his income, it is mandatory upon the Assessing Officer to levy penalty under section 271(1)(c) if a claim is made which is held to be unsustainable in law. The Supreme Court merely stated that willful concealment is not an essential ingredient for attracting a civil law liability under section 271(1)(c) read with the explanation thereto. In other words, all that the judgment holds is that the concealment need not be willful to attract penalty. However to attract the provisions of section 271, the assessee must be held to have concealed the material particulars or to have furnished inaccurate particulars. At the cost of repetition in the present case, there was no concealment of any material particulars by the respondent. Nor did the respondent furnish inaccurate particulars. The respondent disclosed all material particulars and on the basis thereof, made certain claims which have been found purely as a question of law to be not sustainable.

In the present case, Explanation 1(B) is inapplicable. This is in view of the fact that it is an admitted position that the respondent has neither concealed any particulars of income nor furnished inaccurate particulars of income. Explanation 1(B) would apply only where an assessee has concealed the particulars of his income or has furnished inaccurate particulars of income. Explanation 1(B) provides that in such cases if the reasons given for the concealment or furnishing of inaccurate particulars of income are found to be unsubstantiated or not bona-fide, the amount added or disallowed in computing the total income would represent income in respect of which particulars have been concealed."

After perusing the above said judgment of the Hon'ble Bombay Court, there is hardly any issue left as to whether the said case law of Dharmendra Textile Processors (supra) is applicable qua the instant case or not as now, it stands concluded that concealment need not be willful to attract penalty. However, to attract imposition of penalty, the assessee must be held to have concealed particulars of income or furnished inaccurate particulars. In the

instant case, as we have already observed herein above, there are no such allegations against the assessee.

10. In the light of the above discussions, we hold that the assessee's revised return stood duly accepted as a 'valid' return and the assessment was completed (supra) and merely because the Assessing Officer invoked section 50C(2) and adopted guideline value to be the actual sale consideration and made addition in the assessee's income automatically become a case attracting penalty under section 271(1)(c) of the "Act". Therefore, we hold that the CIT(A) has erred in confirming the penalty imposed by the Assessing Officer. Hence, we accept the issue in favour of the assessee and allow the instant appeal.

11. Since both the representatives ad idem with the issue is same in I.T.A. No. 998/Mds/2012 as well, this appeal also stands accepted.

To sum up I.T.A. No. 997 and 998/Mds/2012 are allowed.

Order pronounced on Friday, the 12th of October, 2012 at Chennai.

Sd/-	Sd/-
(N.S. SAINI)	(S.S. GODARA)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, the 12.10.2012

Vm/-
To: The assessee//A.O./CIT(A)/CIT/D.R.