

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री विजय पाल राव, न्यायिक सदस्य एवं
श्री बी. आर. बास्करन, लेखा सदस्य के समक्ष
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

ITA NO.6454/Mum/2011
Assessment year: - 2008-09

Asst. Commissioner of Income Tax – 14(1), 202, 2 nd Floor, Earnest House, Nariman Point, Mumbai – 400 021.	V s.	M/s Sunland Metal Recycling Room No. 13, 1 st Floor, Anand Building, 24, Anantwadi, Fanaswadi, Mumbai – 400 002.
Appellant		Respondent

Revenue By	Shri Neil Philip
Assessee By	Shri Vimal Punmiya

Date of hearing	19.11.2014
Date of pronouncement	10-12-2014

ORDER

Per Vijay Pal Rao, JM

This appeal by the revenue is directed against the order dated 7-7-2011 of CIT(A) arising from the penalty order passed u/s 271(1)(c) of the Income Tax Act. The revenue has raised solitary ground as under:-

“ On the facts and in the circumstances of the case and, the Ld. CIT(A) has erred on the fact as well as in law in cancelling the penalty u/s 271(1)(c) levied at Rs. 22,12,069/- ignoring the fact that the assessee has furnished inaccurate particulars in respect of value adopted for computation of capital gain in view of the mandatory provision of section 50C of the Act.”

2. The brief facts relevant to the levy of penalty are that the assessee had transferred / sold office premises to its sister concern for a sale consideration of Rs. 1.55 crores. The Assessing Officer considered the full sale consideration as per stamp duty authority valuation at Rs. 2,00,08,000/- in accordance with the provisions of section 50C of Income Tax Act. Accordingly, the Assessing Officer made an addition to the Short term Capital Gain. Subsequently, the Assessing Officer initiated penalty proceedings u/s 271(1)(c) for levy of penalty against the addition made to the Short term Capital Gain and levied a penalty of Rs. 22,12,069/- being 100% of tax sought to be evaded, vide order dated 30.09.2010..

3. The assessee challenged the action of Assessing Officer before CIT(A). The CIT(A) has deleted the penalty by following the various decisions of this Tribunal on the point and held that there is no concealment of any particulars of income on the part of the assessee.

4. We have heard the Ld. DR as well as Ld. AR and considered the relevant material on record . The Ld. DR has relied upon the order of Assessing Officer and submitted that when the provisions of section 50C are applicable in the case of the assessee then computing the Short term Capital Gain *de hors* the section 50C amounts to furnishing inaccurate particulars of income as well as concealment of particulars of income liable for levy of penalty. On the other hand, the Ld. Authorized Representative has submitted that the assessee has produced all the relevant details as well as records including the sale agreement, wherein, the sale consideration was agreed upon between the parties and actually received by the assessee,

therefore, the addition made by the Assessing Officer in the Short term Capital Gain by invoking the deeming provisions of section 50C of the Income Tax Act does not attract the penal provisions of section 271(1)(c). In support of his contention he has relied upon the following decisions:-

- (i) Renu Hingorani Vs. ACIT (ITA no. 2210/Mum/2010
- (ii) CIT Vs. Madan Theatres Ltd. (Cal. HC) GA No. 684 of 2013, ITAT no. 62 of 2013
- (iii) Shri Chimanlal Manilal Patel Vs. ACIT (ITA no. 508/Ahd/2010)
- (iv) Shri C Basker Vs. ACIT (ITA no. 998/Mds/2012)
- (v) Shri C Vijayakumar (ITA no. 998/Mds/ 2012

5. Having considered the rival submissions as well as relevant material on record, we note that in the assessment proceedings, the Assessing Officer has not given any finding that the sale consideration disclosed by the assessee is not actual amount received as per the agreement of sale. The addition was made by invoking the deeming provisions of section 50C whereby the full value of consideration was adopted as per the valuation of the stamp duty authority for levy of stamp duty. The CIT(A) after considering all the factual matrix of the case has deleted the penalty in para 5 as under:-

“5. On careful consideration of the arguments of the Ld. A.R. and facts stated in assessment order and penalty order and duly considering the applicable legal position and also factual matrix of the case, I am of the considered view that the assessee's grievance is legally sustainable on merits. It is undisputed that as soon as the AO pointed out the applicability of section 50C, the assessee agreed for addition and paid tax immediately. It is also undisputed that all the particulars and material

facts were furnished by the assessee either along with return of income and during the course of assessment proceedings. There is no concealment of any particulars on the part of the assessee. The AO had not doubted genuineness and validity of the documents produced before him and sale consideration received by the assessee. On the contrary, facts of the case that the office premises were transferred to sister concern itself proves that there was no case to doubt the sale consideration shown in the agreement as submitted by the assessee, 70% share in the transferee company is held by the nearest family members of the partners i.e. son, wife or father and therefore it can not be believed that sale consideration in excess of sale consideration shown in agreement might have passed. it seems that basic purpose of transfer was to change ownership of office premises from one group concern to other group concern and not to earn any profit/gain from transfer. Had it been transferred to outsiders there might be a case of suspicion. Which is not so in the instant case. Even otherwise mere suspicion is not sufficient to levy penalty. There should be some material on record to establish that actual sale consideration received by the assessee was much more than the sale consideration shown in the sale agreement. The facts and issue of the instant case are identical with the facts and issue of the case of Renu Hingorani Vs. CIT. On careful consideration of the said decision of the Hon'ble Jurisdictional ITAT, immediately transpires that the said decision is squarely applicable in the case of the assessee. Even otherwise the principles laid down by the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petroproducts Pvt Ltd. and also Hon'ble High Court of Punjab as preferred by the Ld. AR are squarely applicable. The CIT(A) being subordinate authority to the jurisdictional ITAT is bound to follow the decision of the Hon'ble Jurisdictional ITAT on the identical facts. Accordingly, in view of decision of Hon'ble Jurisdictional ITAT of Mumbai in the case of Renu Hingorani Vs. ACIT discussed above, the penalty levied by the AO is not sustainable in the light of the facts of the case, hence the same is deleted."

6. As it is clear that the assessee has disclosed all relevant details as well as documents in support of its computation of Short term Capital Gain by taking into consideration the actual sale consideration received by the assessee. The fact of actual sale consideration received by the assessee has not been disputed by the Assessing Officer but the addition was made simply by applying the deeming provisions of section 50C. Therefore, in view of the various decisions as relied upon by the Ld. Authorized

Representative as well as by the CIT(A), we do not find any error in the impugned order of CIT(A) in deleting the penalty levied u/s 271(1)(c).

7. In the result appeal of the revenue is dismissed.

Order pronounced in the open court on 10th Day of November 2014

Sd/-

Sd/-

(B.R.Baskaran)

(Vijay Pal Rao)

(Accountant Member/लेखा सदस्य)

(Judicial Member/न्यायिक सदस्य)

Mumbai dated 10-11-2014
SKS Sr. P.S,

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The concerned CIT(A)*
4. *The concerned CIT*
5. *The DR, "E" Bench, ITAT, Mumbai*

By Order

Assistant Registrar
Income Tax Appellate Tribunal,
Mumbai Benches, MUMBAI