

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.276/Del./2018
Assessment Year 2014-2015

Shri Ashwani Jaipaty, Ghaziabad. PAN ACLPJ9373L C/o. Sh. Akhilesh Kumar, Advocate, Chamber No.206- 207, Ansal Satyam, RDC Raj Nagar, Ghaziabad.	vs.	The DCIT, Circle-1 Ghaziabad.
(Appellant)		(Respondent)

For Assessee :	Shri Akhilesh Kumar & Shri S.C. Gupta, Advocates.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	10.07.2018
Date of Pronouncement :	11.07.2018

ORDER

This appeal by assessee has been directed against the Order of the Ld. CIT(A), Ghaziabad, Dated 25.10.2017, for the A.Y. 2014-2015, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. Briefly the facts of the case are that the assessee filed his e-return of income on 30.09.2014 declaring total income of Rs. 14,70,410/' and the same was duly processed under section 143(1) of the I.T. Act, 1961. The case was selected for limited scrutiny through CASS for verification of large investment in property as compared to total income. The A.O. noted that the assessee is an individual and into the business of civil contractor. During the year under consideration, the assessee declared net profit of Rs. 13,99,908/- at the rate of 7.05% against total turnover/gross receipt of Rs.1,98,57,475/- During the year, the assessee has purchased an immovable property for Rs.60,00,000/- having ownership/share @ 18.75%. However, as per circle rate of the said property, purchase deed is valued at Rs.1,68,89,000/-. The fact was confronted to the assessee, who readily offered the difference between Circle Rate and actual sale consideration for taxation vide order sheet noting dated 13.06.2016. Thus, the assessee share @ 18.75% is calculated at 31,66,688/-. Finally, the undisclosed investment in property is found at Rs.20,41,688/-

(31,66,688-11,25,000), the same is being added to the income of the assessee. The penalty proceedings were initiated for the concealment and furnishing of inaccurate particulars of income. The A.O. vide separate order levied the penalty under section 271(1)(c) of the I.T. Act, on the aforesaid addition. The assessee challenged the penalty order before Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order in which the assessee briefly explained that addition is made on account of deemed income being the difference between the stamp duty valuation and the actual price, on which, transaction had taken place. The assessee in order to buy peace with the Department, accepted the proposal of the A.O. It is not a case of concealment of income or furnishing inaccurate particulars of income. The Ld. CIT(A) have however, dismissed the appeal of assessee.

3. I have heard the learned Representatives of both the parties and perused the material on record. Learned Counsel for the Assessee reiterated the submissions made before the

authorities below and submitted that assessee is a purchaser. The relevant provisions dealing with 'purchaser' have been introduced in the Act under section 56(2)(vii)(b) of the I.T. Act w.e.f. 01.04.2014 which is the year applicable to the assessment year under appeal. Prior to, there were no provision to deal with such a situation. The addition is made on account of deeming provision. Therefore, it is not a case of concealment of income or furnishing inaccurate particulars of income. Therefore, no penalty is leviable in the matter. He has relied upon the order of ITAT, Delhi Bench in the case of ITO vs. Shri Ajay Sharma ITA.No.995/Del./2016 dated 23.11.2017. He has submitted that notice issued prior to levy of the penalty dated 26.07.2016 under section 274 r.w.s. 271 is invalid and void as the same did not specify as to under which limb of Section 271(1)(c) penalty have been initiated. In support of this contention, he has relied upon the decision of Hon'ble Karnataka High Court in the case of CIT vs. SSA's Emerald Meadows (2016) 73 taxmann.com 241 (Kar.). He has, therefore, submitted that penalty is not leviable in the matter.

4. On the other hand Ld. D.R. relied upon the orders of the authorities below and submitted that since the assessee agreed for addition, therefore, penalty was rightly imposed by the authorities below. The Ld. D.R. relied upon the following decisions :

- (i) Mak Data P. Ltd. vs. CIT (2013) 358 ITR 593 (SC)
- (ii) Samson Maritime Ltd. vs. CIT 2017-TIOL-519-HC-MUM-IT-Bombay-HC
- (iii) Mohd. Raza vs. CIT 2016-TIOL-2026-HC-Del-IT

5. After considering the rival submissions, I do not find any justification to levy penalty against the assessee. The A.O. before levy of the penalty issued show cause notice to the assessee and has mentioned the following as under :

“Have concealed the particulars of your income or have furnishing inaccurate particulars of such income.”

5.1. The show cause notice issued before levy of the penalty is bad in law as it did not specify under which limb of

Section 271(1)(c) of the I.T. Act, the penalty proceedings under section 271(1)(c) of the Act had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The issue is covered in favour of the assessee by the Judgment of the Hon'ble Karnataka High Court in the case of CIT vs. SSA's Emerald Meadows (supra) and confirmed by Hon'ble Supreme Court in the case of CIT vs. SSA's Emerald Meadows (2016) 73 taxmann.com 248 (SC). Therefore, the entire penalty proceedings under section 271(1)(c) of the Act are vitiated and penalty is liable to be cancelled. Further, the addition on account of purchases made at the lesser value of the Circle rate is introduced into the Act in Section 56(2)(vii)(b) w.e.f. 01.04.2014, which is applicable for the first time to the assessment year under appeal. The addition is made by the A.O. on account of deeming provisions. The A.O. has not brought any positive evidence on record to show that assessee has concealed the particulars of income or furnished inaccurate particulars of income. In the similar circumstances, in case of addition made under section 50C of the I.T. Act, the

ITAT, Delhi-B Bench in the case of ITO, New Delhi vs. Shri Ajay Sharma, New Delhi in ITA.No.995/Del./2016 dated 23.11.2017 confirmed the Order of the Ld. CIT(A) in cancelling the penalty. The Order of the Tribunal is reproduced as under :

“2. Briefly, the facts of the case are that assessee has sold industrial plot at Neemrana, Phase-II, Bahror, District Alwar (Rajasthan). The assessee has declared short term capital gain of Rs.19,59,668. The assessee has declared the sale consideration at Rs.1,27,50,000 vide sale deed executed dated 11th March, 2010. The document shows that stamp duty was paid at Rs.1,83,02,910 as reflected in the AIR information as against sale consideration of Rs.1,27,50,000 and there is a difference of Rs.55,52,910. Thus the provisions of Section 50C of the I.T. Act were found attracted in this case. The A.O. accordingly made addition of Rs.55,52,910 on account of difference and taken as additional short term capital gain and added to

the income of the assessee. The A.O. vide separate order levied the penalty under section 271(1)(c) of the I.T. Act.

3. *The assessee explained before the Ld. CIT(A) that A.O. has applied deeming provisions of Section 50C of the I.T. Act and made addition being difference between sale consideration as per sale deed and valuation made by the Stamp Valuation Authority. The Valuation of Stamp Valuation Authority is not a conclusive evidence of actual fair market value of the property. The A.O. has not brought any evidence on record by which it can be established that assessee has received more than the amount shown to have received as per the sale deed. The assessee disclosed all the material facts before A.O. Therefore, it is not a case of levy of penalty. The assessee relied upon the decision of Hon'ble Kolkata High Court in the case of CIT vs. Madan Theatres Ltd., 260 CTR 75. The Ld. CIT(A) reproduced the judgment in the impugned order and found that penalty have been levied on account of addition made by applying*

the deeming provisions of Section 50C of the I.T. Act, which could not be construed as furnishing of inaccurate particulars or concealing the particulars of income. It was further found that for applying the provisions of Section 50C, it is not necessary for the A.O. to examine whether actually the assessee has received anything over and above the amount mentioned in the sale deed because the addition is made by applying the deeming provision of Section 50C of the Act. There are no positive evidence to indicate receipt of any money over and above what is stated in the sale deed. The assessee disclosed all the relevant facts before A.O. Therefore, penalty was cancelled.

4. *The Ld. D.R. relied upon the decision of Hon'ble Delhi High Court in the case of Zoom Communications 327 ITR 510 and submitted that even by applying deeming provisions under section 50C of the I.t. Act, penalty is leviable.*

5. On the other hand, the Learned Counsel for the Assessee, reiterated the submissions made before the authorities below and relied upon the decision of the Hon'ble Kolkata High Court in the case of CIT vs. Madan Theatres Ltd., (supra).

6. After considering the rival contentions, we do not find any merit in this appeal of the Revenue. The assessee has disclosed all the relevant facts of sale of the property to the Revenue Department. The assessee declared the sale consideration of Rs.1,27,50,000 as per sale deed and also offered the short term capital gain for taxation. The A.O. however, applied the deeming provisions of Section 50C of the I.T. Act, for the purpose of making the addition. Thus, the A.O. did not bring any positive evidence on record to show that assessee has concealed particulars of income or furnished any inaccurate particulars. The valuation of the Stamp Valuation Authority is not a conclusive evidence of receipt of the money by assessee over and above what is

recorded in the sale deed. The A.O. has not brought any concrete evidence of concealment of income in the order. The A.O. at the stage of assessment, simply applied the deeming provisions of Section 50C of the I.T. Act without bringing any evidence on record for concealment of income or furnishing inaccurate particulars by the assessee. In the absence of any positive evidence with respect to concealment of income, there were no justification for the A.O. to levy penalty in the matter. The Hon'ble Kolkata High Court in the case of CIT vs. Madan Teatres Ltd., (supra), on identical facts, dismissed the departmental appeal in which it was held as under :

“Where assessee had offered actual amount received on sale of property for taxation, revenue authorities were not justified in passing penalty order under section 271(1)(c) by adopting higher sale consideration under section 50C on basis of stamp duty valuation of said property.”

7. *Considering the above discussion in the light of the order of the Ld. CIT(A), no interference is called for in the matter. It may also be noted here that Ld. CIT(A) discussed some other small additions also on which penalty have been cancelled. However, during the course of arguments, no arguments have been made by the Ld. D.R. on the same and even the same are not challenged in the grounds of appeal. In view of the above, departmental appeal stands dismissed.*

8. *In the result, appeal of the Department is dismissed.”*

5.2. Considering the above discussion in the light of facts above, the decisions cited by the Ld. D.R. would not support the case of the Revenue. I am, therefore, of the view that it is not a fit case for levy of the penalty. I, accordingly, set aside the orders of the authorities below and cancel the penalty.

6. In the result, appeal of assessee is allowed.

Order pronounced in the open Court.

Delhi, Dt. 11th July, 2018.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.