

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**

ITA No. 17/Srt/2018 (AY: 2007-08)

Jagubhai Chhaganbhai Patel, New Street, Taluka Choryasi, Village- Hazira, Surat-395007. PAN No. ACLPK 9351 P	Vs.	I.T.O., Ward-2(1)(2), Surat.
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri Mehul Shah, CA
Respondent represented by	Shri J.K. Chandani, Sr.DR
Date of hearing	04/05/2022
Date of pronouncement	04/05/2022

Order under section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-2, Surat (in short, the Id. CIT(A) dated 10/10/2017 for the Assessment year 2007-08. The assessee has raised following grounds of appeal:

- “1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in levying penalty of Rs. 6,13,500/- u/s 271(1)(c) of the I.T. Act, 1961, on addition of Rs. 23,09,710/- on account of capital gain and income from other sources being compulsory acquisition of land.*
- 2. It is therefore, prayed that the above penalty levied by the assessing officer and confirmed by the CIT(A) may please be deleted.*

3. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*
2. Facts as extracted from the orders of the lower authorities are that the land of aforesaid individual assessee was acquired by Special Land Acquisition Officer, Surat for M/s Essar Steel Ltd. The Revenue / Assessing Officer made re-opening in this case under section 147 of the Income Tax Act, 1961 (in short, the Act). Assessment was completed under section 144 r.w.s. 147 of the Act in this case on 08/03/2013. The Assessing Officer while passing the assessment order made addition on account of Long Term Capital Gains (LTCG) on transfer of land, capital gain on the certain amount received for permanent (pacca) structure was treated as income from other sources and agriculture income shown by the assessee was treated as unexplained cash credit under section 68, thereby making additions of Rs. 23,09,700/-. The assessing officer levied penalty under section 271(1)(c) on various additions. The Assessing officer levied penalty @100% of tax sought to be evaded. The assessing officer worked out penalty of Rs. 6,13,500/-. On appeal the Ld. CIT(A) upheld the action of assessing officer. Thus, further aggrieved the assessee has filed present appeal before this Tribunal.
3. We have heard the submissions of learned authorised representative (AR) of the assessee and the learned departmental representative (DR) for the revenue and have gone through the orders of the lower authorities. The Id

AR of the assessee submits that in all quantum assessment appeals of the Hazira land appeals/ cases either the additions has been deleted or in some cases the additions on accounts of capital gain for the receipt against the pucca structure has been sustained only on estimation basis. The penalty in lead case of Ambaben J Patel has also been deleted. Thus, the grounds of appeal raised by him in this appeal are covered. The Id AR for the assessee further submits that in other penalty appeals under section 271(1)(c), all penalty has been deleted vide order dated 26.04.2022.

4. On the other hand, the learned DR for the revenue supported the order of assessing officer and Id CIT(A).
5. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully in quantum assessment as well as in penalty matter. We find that against various additions made in the assessment, the assessee(s) filed appeal before Ld. CIT(A). The Ld. CIT(A) in quantum assessment, upheld the addition of capital gain on transfer of land. However, the income added under the head "income from other sources" against the pucca structure was changed to as "income from capital gains". As the assessee was not allowed the cost of acquisition and improvement on permanent structure, they were allowed 50% as cost of construction or improvement, received against permanent structure and the

additions on account of undisclosed source was treated as income from agriculture activities.

6. On further appeal before Tribunal, the Tribunal held that addition of capital gain on account of transfer of land/ acquisition of land is not taxable as the said land / impugned land is not 'capital asset' as defined under section 2(14)(iii)(a) of the Act. The land transferred by individual assessee(s) does not falls in the Municipal Area. Hazira Notified area is not a Municipal area or deemed municipal area, therefore, the receipt/ gain on transfer of land is not taxable under Income tax Act. Further, the assessee on their alternative pleas were also held eligible for exemption under section 10(37) of the Act as the land was compulsorily acquired by Government of Gujarat by completing statutory formalities under Land Acquisition Act, 1882. The land was used for agriculture purpose for two years prior to its acquisition. And the assessee(s) fulfilled all the requisite condition for seeking exemption under section 10(37) of the Act. The other addition made under the head "capital gains" against the cost of pucca structure, the assessee's was allowed 60% as cost of acquisition or cost of improvement, against the relief of 50% as allowed by Ld. CIT(A). Further, in some cases, the agricultural income offered by assessee(s) were treated as "income from other sources" has been held as "income from agricultural activities". Thus, in quantum appeals all the assessee was granted substantial relief in deleting major part

of additions and only part of capital gains only on account of cost of improvement on pucca structure was partly upheld on estimation basis. Therefore, all substantial additions were either deleted or upheld only on estimation basis. In our considered view no penalty under section 271(1)(c) of the Act is leviable on this assessee. In the result, the grounds of appeal raised by the assessee are allowed.

7. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 4th May 2022 at the time of hearing of appeal.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 04 /05/2022

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr.Private Secretary, ITAT, Surat