

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G", MUMBAI**

**BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER)
AND
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)**

I.T.A. No.ITA No.4021/Mum/2014
(Assessment year : 2005-06)

Ghanshyam L Bodani B-35m Lucky Apartments Behind Shnti Ashrm, Eksar Road Borivali (W), Mumbai 400 103	vs	ACIT, Central Cir. 21, Mumbai
PAN :AAUPB9196Q		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri A Ramachandran

Date of hearing : 01-06-2016
Date of pronouncement : -0602016

ORDER

Per ASHWANI TANEJA, AM

This appeal has been filed by the assessee against the order of Commissioner of Income-tax (Appeals) [hereinafter called Id.CIT(A)"] dt 07-03-2014 passed against the penalty order u/s 271(1)(c) dated 30th March, 2012 challenging the levy of penalty of Rs.41,71,188.

2. During the course of hearing, none attended on behalf of the assessee. It is noted that notice was served by registered post. On earlier occasions also

many dates have been fixed, but none has attended on behalf of the assessee despite the fact that on all the dates notices were duly served on the address given in the appeal memo filed by the assessee. Ld. Departmental Representative for the Revenue made the arguments on the basis of material on record. Under these circumstances, we have no option but to proceed ex parte qua the assessee.

3. The solitary issue raised in this appeal is with regard to penalty of Rs.41,71,188 levied by the Assessing Officer on the amount of cash paid by the assessee for acquisition of shops out of undisclosed sources.

4. The brief facts noted from the orders of the lower authorities are that the assessee is an individual and a partner in M/s Satnam Sakhi & Associates. The Partnership firm M/s Satnak Sakhi Associates comprises of three partners, with share of profit as shown hereunder:-

Name	Share of profit
Mr. Umewsh Israni family	24%
Mr. Ghanshuam Bodani family	36%
Mr. Laxmichnd Rohira family	40%
Total	100%

5. There was a search and seizure action on Shri Laxmichand Rohira on 08.05.2007, during the course of which, loose papers numbered 14 to 21 (as contained in folder marked Annexure 'A') were found. On an analysis of the loose sheets, the A.O found that the appellant had made cash payments aggregating to Rs. 3,44,02,000/- for acquisition of shops, in the name of the firm, and the same was kept outside the books of account. The A.O held that

36% share is that of the appellant, on the basis of the profit sharing ratio. Accordingly a sum of Rs.1,23,84,720/- was brought to tax in the hands of the appellant on substantive basis. The A.O has assessed the same on protective basis in the hands of the firm. Penalty proceedings were initiated under s. 271(1)(c) of the Act. The Assessing Officer did not accept the explanations of the assessee and levied the penalty.

6. Being aggrieved, assessee filed appeal before Id.CITA) challenging the levy of penalty and made detailed submissions before him. The submissions made by the assessee before the Id.CIT(A) challenging the levy of penalty are reproduced below:

“a. During the course of search action under s. 132 on the premises of the partner Shri Laxmichand Rohira on 08.08.2007, loose papers numbering 14 to 31 kept in loose paper folder Annexure A (page 1 to 6) were found and seized. These papers contained certain figures aggregating to Rs. 3,44,02,000/- (refer page 14) and Rs. 1,97,89,286/- (refer page 20) against each of the partner on their profit sharing ratio. All the pages numbering 14 to 21 were written in the same handwriting.

b. A close examination of the seized papers numbering from 14 to 21 will reveal that page no. 14 is the summarizing paper from page no. 15 to 17 and the same is related to figure of Rs. 3,44,02,000/- which is added in the hands of the partners in their profit sharing ratio. Page 18 to 21 relate to acquisition of aforesaid shop premises and rental income out of them.

c. There is no dispute that page no. 18 to 21 are related to acquisition of 4 shop premises by partnership firm M/s. Satnam Sakhi & Associates and the same are accounted for in the books. Also there

is no dispute that same are written in single handwriting but not by appellant or his employees. “

7. The Id.CIT(A) considered the submissions by the assessee but was not convinced with the arguments of the assessee and, therefore, he confirmed the levy of penalty with following observations:

“5. I have very carefully considered the facts and the legal position. I have taken into account the findings of the A.a as well as the counter arguments of the appellant. I have also examined the copies of the seized material which is crucial to understand the issue at stake. Four shops were acquired by the firm in Everest Chamber, Andheri East. The appellant has no quarrel about the acquisition cost as reflected in the books at a figure of Rs. 1,90,51,074/-. The said payments to the extent of Rs.1,90,51,074/- were made by cheque. From a close examination of the explanation furnished by the appellant, it can be seen that appellant contends that pages 18 to 21 provides data from the past bookings of the acquiring premises. This can be juxtaposed with the fining of the A.O that the figure as appearing therein corresponds with the accounted figures in the books of account. Therefore a reasonable and logical conclusion that can be drawn is that the appellant in fact has no quarrel with the finings of the A.O that the notings in page 20 refer to the figures as appearing in the books of accounts, and which are agreed to be payments made through cheque. Hence what is to be examined is the notings as per pages 14 to 17, which,

according to the A.O, represents the cash component of the Rs. 3,44,02,000/-. According to the appellant, the A.O mis-interpreted "c" written on page 14 as "cash" which in fact is "confirmation". As per the appellant, the notings at page 14 to 17 are with reference to a proposed project for acquiring additional office/shop premises and that they give the likely cost of the project, respective shares of partners, their commitment for contribution to project, deficit/ surplus with respect to the respective shares and likely payment schedule to Builder. The appellant thus makes out a case that the figures appearing in pages 14 to 17 are with reference to a proposed project and the figures as noted are mere approximations or estimations of the cost as projected. But the figures as noted, especially as noted in page 14, do not in any manner give the appearance of mere projection or estimates. The notings as in page 14 are reproduced hereunder:-

Lakhi

Received	2,03,50,000
40% share	<u>1,37,60,800</u>
Excess Received	65,89,200

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Umesh

C. Received	48,52,000
Less: Share 24%	<u>82,56,480</u>
Short received	34,04,480

Ganshyam

C Recd. 92J00~000

Less: Share 36%	23,84,720
Short Received	<u>31,84,720</u>

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Ganshyam to Lakhi	31,84,720
Umesh to Lakhi	<u>34,04,480</u>
	65,89,200

From the above, it can be observed that the words noted are "C. Recd which is, as per normal understanding or as per preponderance or probability as observed by the A.O, can ordinarily be "cash received". If it were only projection, the word "received" is certainly out of place, would be rendered meaningless and would not be in accordance with the state of affairs as projected by the appellant. The word "received" has no place in a scheme of things which are meant to be "projections". The said explanation of the appellant belies logic. The explanation as given by the appellant is unacceptable in the given facts and circumstances. The appellant has offered an explanation which he has not been able to substantiate. When the appellant fails to substantiate the explanation, the provisions of Explanation 1 to section 271(1)(c) are applicable.

6. The appellant has raised a ground that the AO has heavily relied on the findings in the quantum assessment without bringing any direct or cogent evidence on record.

6.1 I have considered the said issue raised. It is to be stated that certainly quantum assessment does not automatically trigger the levy of penalty. Penalty proceedings are separate and distinct from the assessment proceedings. The findings in the assessment are certainly valid though have only probative value. The facts of this case have been independently considered bearing in mind the provisions in respect of levy of penalty under s. 271(1)(c). So also, in penalty proceedings, concealment need not be proved to the hilt. The circumstantial evidences are certainly valid and material especially so when willful concealment is not an essential ingredient for attracting penalty, which is a civil liability. It has been held in CIT vs. Master Sunil R. Kalvo [2007] 292 ITR 0086 (Karnataka) that evidence to establish to the hilt is unnecessary for the purpose of levy of penalty. All that the section requires is to consider the Explanation. In this case the materials seized are staring against the assessee. This is

in itself direct evidence against the assessee. A further contention raised is that the not recorded. The assessee had been heard in the matter, he was given reasonable opportunity during the assessment and penal proceedings. All that the assessee wanted to state has already been stated and therefore the objection that his statement was not taken cannot be a valid ground.

6.2 In the instant case, the explanation as submitted has neither been substantiated nor is found to be bonafide. The Explanation 1 to s. 271(1)(c) is squarely attracted in this case. The penalty imposed in a sum of Rs.41,71,188/- is upheld.”

8. Being aggrieved, assessee filed appeal before us. From the order of he Id.CIT(A), it is seen that factual findings have been recorded that element of cash was involved in the transaction of acquisition of shops. The Assessing Officer has given a finding after verifying the evidences that cash component of payments aggregating to Rs.3,44,02,000 was involved in the transaction. Amount-wise break up and details was also given by Id.CIT(A) on page 6 of his order wherein under the name of the assessee specific amounts have been mentioned. Nothing has been brought before us to rebut these factual findings. Under these circumstances, we find the Id.CIT(A) has rightly confirmed the penalty levied by the Assessing Officer. In view of the same, no interference is called for in the order of the Id.CIT(A) and the same is confirmed.

9. As a result, appeal filed by the assessee is dismissed.
Pronounced in the court on this 10th day of June, 2016.

Sd/-	sd/-
(AMIT SHUKLA)	(ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 10th June, 2016