

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

BEFORE SHRI JASON P. BOAZ ACCOUNTANT MEMBER
AND SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

ITA No. 97/MUM/2015
(Assessment Year : 2007-08)

Veena Milan Dalal,
Bhupen Chambers, Ground Flr.,
Dalal Street, Mumbai 400 023
PAN: AABPD 4089R
Vs.

... Appellant

The DCIT (OSD-II),CR-7,
Aaykar Bhavan,M.K.Road,
Mumbai 400 020

..... Respondent

ITA No. 671/MUM/2015
(Assessment Year : 2007-08)

The DCIT , C.C. 4(4),
Aaykar Bhavan,M.K.Road,
Mumbai 400 020

... Appellant

Vs.

Veena Milan Dalal,
Bhupen Chambers, Ground Flr.,
Dalal Street, Mumbai 400 023
PAN: AABPD 4089R

.... Respondent

Assessee by : Shri Vipul Joshi
Revenue by : Shri M.V.Rajguru
Date of hearing : 17/08/2016
Date of pronouncement : 26/08/2016

ORDER**PER JASON P. BOAZ, A.M:**

These are cross appeals, by Revenue and the assessee directed against the order of the CIT(Appeals)-40, Mumbai dated 7/11/2014 for assessment year 2007-08, in respect of the penalty levied under section 271(1)(c) of the Act for assessment year 2007-08.

ITA No.671/Mum/2015 – Revenue’s appeal for A.Y. 2007-08:-

2.1 The grounds of appeal raised by the Revenue are as under:-

1. “Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed in appreciating the fact that the assessee had concealed the income from long term capital gain by furnishing inaccurate particulars by wrongly claiming exemption under section.54.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the fact that the same Long Term Capital Gain was also not offered for taxation for A.Y.2009-10.”

2.2 At the outset the Ld. Departmental Representative brought to the notice of the Bench that the disputed issue was the levy of penalty in respect of capital gains of Rs.43.50 lakhs tax for which was below the monetary limit of Rs.10.00 lakhs. As per the latest CBDT, Circular No.21 of 2015 dated 10/12/2015, new guidance of monetary limits for filing appeals by the Department have been issued, whereby the tax effect for filing of appeals before the ITAT has been prescribed at Rs.10 lakhs. In the aforesaid CBDT Circular(supra), it has been specifically clarified that the said instructions would apply retrospectively to all pending appeals.

3. Accordingly, the instant appeal filed by the revenue is not maintainable and is dismissed in-limine.

Assessee's appeal for A.Y. 2007-08 in ITA No.87/Mum/2015:

4.1 The grounds of appeal raised by the assessee in this appeal read as under:-

"1.a. The Learned Commissioner of Income Tax(Appeals)-40 Mumbai [CIT(A)] erred in confirming the penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) by the Assessing Officer in respect of sale of Goa property.

1.b. While doing so, the CIT (A) erred in not considering the detailed written submission made before him.

1.c. It is submitted that in the facts and in law the CIT (A) failed to appreciate that there was neither concealment of income for the year thereby erred in confirming penalty levied under section 271(1)(c) of the Act by the Assessing Officer.

2. The appellant craves leave to add, alter, delete or modify all or any of the above grounds of appeal."

4.2 The Ld. Representative for the assessee was heard in support of the grounds raised. The Ld. Representative for the assessee submitted that the assessee's appeal was in respect of the confirmation of penalty levied under section 271(1)(c) of the Act in respect of addition of Rs.21,31,720/- in connection with the capital gains arising on account of transfer of property in Goa in the year under consideration at paras 10 to 14 of the impugned order. It is submitted that this penalty would not now survive for consideration in view of the decision of the Co-ordinate Bench of this Tribunal in the assessee's own case for the assessment year 2007-08 in ITA No.7785/Mum/2012 dated 13/1/2006 wherein on

appeal on quantum additions, the Co-ordinate Bench considered and decided this issue of capital gains on transfer of property in Goa in favour of the assessee at paras 6 to 12 thereof. It is prayed that in view of the above, the penalty levied in respect of addition of Rs.21,31,720/- on account of capital gains arising on transfer of Goa property be deleted. The Ld. Departmental Representative was also heard.

4.3.1 We have heard both the Ld. Representative for the assessee and Ld. Departmental Representative in the matter and perused and carefully considered the material on record; including the judicial pronouncements cited. We find that, as contended by the Ld. Representative for the assessee, the Co-ordinate Bench of this Tribunal in its order in ITA NO.7785/Mum/2015 dated 13/01/2016 in the assessee's own appeal on quantum additions for assessment year 2007-08 has deleted the addition made in respect of income from capital gains on transfer of property at Goa; holding as under at paras 6 to 13 of that order:-

6. Ground No.3, is in respect of taxing capital gain in respect of Goa property. The AO while making the assessment has observed that assessee received Rs. 30 Lakhs in connection with the transfer of property in Goa and amount was not offered for tax, the assessee replied that only advance of Rs. 30 Lakhs was received by the assessee in the accounting year ended on 31.03.2007 and no formal agreement was entered for sale and conveyance deed was executed in March 2009, when the balance amount of Rs. 1 Lakhs was received and thus no income had arisen during the year ended on March 2007, however, the AO observed that the assessee has not declared the capital gain in her return for AY-2009-10 in spite of the fact that transaction is stated to have been completed in FY-2008-09 only and computed it to be taxable in AY-2007-08.

7. The CIT(A) in its order while dealing this ground has held that the sale-deed has been prepared on a subsequent date to the date of search and hence not reliable and that in the memo of understanding/ agreement, the possession to the purchaser was already granted on receipt of advance of Rs.

30 Lakh. The Ld. CIT (A) further concluded that the provision of section 53A of the Transfer of Property Act the possession was handed over in part performance.

8. The Ld AR of the assessee while arguing has drawn our attention in respect of the agreement, copy of which placed on record on page no. 9 to 23 of paper book. We have perused the agreement/MOU which contained the signature of assessee only in each and every page and there is no signature of purchaser, this agreement bears the date of 31.03.2007, and was allegedly signed through Attorney/husband of assessee Shri Milal B. Dalal in favour of Shri Jagdip Sharma S/o Rajendra Pal Sharma of Nagpur but, interestingly the agreement is not signed by the purchaser, though it was typed / written on a Non-Judicial Stamp Paper of Rs. 62,000/-. The Non-Judicial Stamp Paper were purchased in the name of Rahul Sharma/Rajendra Pal Sharma of Nagpur, on careful scrutiny of the document, we found that the MOU/agreement to sale is not a concluded contract between the assessee and the purchaser. Though, the assessee has admitted to have received a sum of Rs. 30 Lakh on 31.03.2007.

9. The AO concluded that assessee allowed the possession of property in Goa to the purchaser, infact there is no evidence to establish that possession of the property was transferred to the so-called purchaser.

10. Infact, the sale-deed was executed on 25.03.2009, and as per Section 54 of Transfer of Property Act, the title of properties considered to be transferred only on the execution of registered sale-deed. And as per the contents of the sale-deed, the possession was handed over to the purchaser only on 25.03.2009. The CIT(A) wrongly concluded, that the sale deed has been prepared on a subsequent date of search and not reliable.

11. The CIT(A) has not considered the contents of the registered document rather gave more reliance to the memorandum of understanding which was infact not a concluded contract and cannot be considered as properly executed document as per the provisions of Transfer of Property Act, further, the finding of AO as well as CIT(A) that as per section 53A of Transfer of Property Act, this was amounts to transfer are wrong.

12. Section 53A of Transfer of Property Act deals with the principal of part performance in respect of transfer of property, which a plea of defence by a purchaser in the event the purchaser is being dispossessed by the seller and thus the principle envisaged u/s 53A is not applicable against the assessee, hence this grounds of appeal is accepted and the finding of AO and CIT(A) are set-aside.

13. Since the transfer of property in Goa took place on 25.03.2009 and the revenue may take appropriate legal step to include the transaction in the relevant assessment year by considering the transfer of property in accordance with the provisions of I.T. Act.

4.3.2. In view of the decision of the Co-ordinate Bench in the assessee's own case for assessment year 2007-08, deleting the quantum addition in respect of income from capital gains on transfer of property in Goa, the penalty levied under section. 271(1)(c) of the Act in this regard at para-14 of the impugned order would not now survive for consideration and we, therefore, delete the said penalty levied under section. 271(1)(c) of the Act.

5. In the result, the assessee's appeal for assessment year 2007-08 is allowed.

6. To sum up, Revenue's appeal for assessment year 2007-08 is dismissed and the assessee's cross appeal is allowed.

Order pronounced in the open court on 26 /08/2016

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER
Mumbai, Dated 26/08/2016

Sd/-
(JASON P. BOAZ)
ACCOUNTANT MEMBER

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai