

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH - NEW DELHI
Before Sh. G.D. Agrawal V.P. and Sh. C.M. Garg, J.M
ITA No. 1054/DEL/2015
Asstt. Year: 2007-08

Shiv Kumar Kamboj Kairana Road Shamli	VS	ITO Ward-I Shamli
APPELLANT		RESPONDENT
PAN No. ABFPK2584D		

Appellant by : None
Respondent by: Sh. P. Dan Kanunjna Sr. DR
Date of final hearing : 08.12.2015
Date of pronouncement : 24.02.2016

ORDER

Per C.M. Garg, JM

This appeal by the assessee has been filed against the order of the Commissioner of the Income Tax (Appeals) Muzaffarnagar dated 01.12.2014 passed in first appeal No. 176/13-14/MZR for A.Y. 2007-08.

1. The main ground raised by the assessee in this appeal is that the CIT(A) has grossly erred in law and on facts in upholding the penalty of Rs. 1,18,127/- imposed under section 271(1) (c) of the Income Tax Act, 1961 (for short the Act)

2. When the case was called for hearing neither the assessee nor representative appeared before us. However, an application for adjournment has been submitted but the same was dismissed as on perusal of the record

we find it appropriate to decide the appeal in absence of assessee appellant and after hearing the Ld Departmental Representative (D.R.) and we proceeded to adjudicate the appeal.

3. As per contention raised by the assessee before the authorities below we observed that the assessee defended the levy of penalty by submitting that the incorrect penalty has been imposed on account of long terms capital gain on the conversation of land into stock and trade under section 50C of the Act, which cannot be treated as concealment of income or furnishing of inaccurate particulars of income as per the provision of section 271 (1) (c) of the Act. It is also contended by the assessee that the authorities below failed to appreciate that in the original proceedings u/s 143 (3) of the Act the assessee himself offered the deemed estimating value at Rs. 1000 per sq. mtr. Against the value claimed at Rs. 125 per sq. mtr. Subject no penal action taken against him. It was vehemently contended by the assessee that the assessee had neither concealed particulars of income nor had filed inaccurate particular of income and the CIT(A) has failed to appreciate that the additions are made mere on disallowance of expenses/claims and penalty proceedings have been initiated without any specific charges hence the same are liable to be set aside.

4. The Ld DR supported the penalty order and submitted that the assessee has deliberately furnished inaccurate particulars of his income within the meaning of explanation 1 (B) of section 271(1) (c) of the Act by not showing the accurate particulars of income from sale of property to the tune of Rs. 6,57,950/- therefore the penalty was correctly and rightly

imposed by the AO and the same was upheld by the first appellate authority by passing a speaking and justified order.

5. On careful consideration of submissions of the assessee before the authorities below and the contentions of the Ld DR supporting the penalty order as well as impugned order undisputedly, in the quantum order passed under section 143 (3) of the Act the assessing officer made an addition on the basis of revise working submitted by the assessee in regard to the long terms capital gain and the assessing officer after checking found the working/computation of the assessee in order and accordingly made addition on which the penalty proceedings has been initiated and penalty has been imposed. It is pertinent to note that in response to the query raised by the AO the assessee filed written reply dated 24.12.2009 during assessment proceedings which reads as follows:

“The fair market value of agriculture lands converted into stock in trade offered by the assessee as on 01.04.2005, when converted into “Stock in trade” may be valued as per circle rate fixed for agriculture land within Shamli Hadood but the assessee was required to bring evidence on record that the lands in question were actually cultivated on the date of conversion. I, therefore offer to assess at fair market value at the rate of Rs. 1000/- per sq. mtr. subject to no penal action whatsoever. I also undertake that I shall prefer no appeal against the addition made on this ground and I shall also pay the entire tax within the stipulated time.”

6. In view of above we observed that the assessee proposed fair market value of the land sold at the rate of Rs. 1000 per mtr. Which was accepted by the AO and addition in consequence thereto was made. In the situation we are not in agreement with the conclusion with the authorities below that the assessee furnished inaccurate particulars of his income regarding long term capital gain. Hence, penalty under section 271 (1) (c) of the Act is not impossible on the assessee because there was no mal intention of the assessee to submit inaccurate particulars of his income and his contention/reply dated 24.12.2009 submitted before the AO during quantum proceedings, as reproduced herein above, clearly states that the assessee himself offered fair market value at the time of sale which was accepted by the AO for making addition and the same was accepted by the assessee without agitating the issue before the Higher Authorities.

7. On the basis of following discussion we are inclined to hold that the penalty was levied on the assessee without any justified and legal basis and thus we dismissed the same. Accordingly, sole issue/ground of the assessee is allowed. In the result, appeal is allowed

Order pronounced in the court on 24.02.2016

Sd/-

(G. D. Agrawal)

Vice President

*Res. Desktop

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

sd/-

(C.M Garg)

Judicial Member