

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AHMEDABAD SMC BENCH, AHMEDABAD**

**[Coram : Pramod Kumar, Accountant Member]**

**ITA No. 365/Ahd/2015  
Assessment Year: 2009-10**

**Vinit C. Patel**

35 Swati Society,  
Nr. St. Xaviers High School,  
Navrangpura, Ahmedabad.  
[PAN : AJAPP 7717 L]

.....**Appellant**

Vs.

**Income Tax Officer  
Ward 10(4), Ahmedabad.**

.....**Respondent**

**Appearances by :**

**M.K. Patel for the appellant**

**Prasoon Kabra for the respondent**

Date of concluding the hearing : 05.07.2017

Date of Pronouncing the order : 22.09.2017

**O R D E R**

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 31<sup>st</sup> August, 2012, passed by the learned CIT(A)-XVI, Ahmedabad, in the matter of penalty under section 271(1)(c) of the Income tax Act, 1961 (the Act hereinafter), for the Assessment Year 2009-10, on the following Grounds:-

*"1) The learned CIT(Appeals) has erred in law and on facts in confirming the penalty order, passed by the Assessing Officer and the quantum of penalty order based on Clause (B) of Explanation 1 of 271(l)(c) of the I.T. Act, levied by the A.O. at Rs. 1,99,259/- and revised by CIT (A) at 1,23,466/- vide his penalty order dated 29/12/2014. Change in estimates regarding cost of acquisition on basis of the revised estimate of the fair market value as on 1-4-1981 as was made out by the CIT(Appeals) at the rate of Rs.160/- per sq yard, for the reasons given by him regarding cost of acquisition, as per the discussion on page 42 & page 43 of his appellate order, and page 15 of CIT (A) penalty order.*

- 2) *The Ld A.O and CIT(A) have erred in considering the points of Clause B of Explanation 1 of Sec 271(l)(c) by grossly neglecting the cost of land for 1981, taken by the assessee depending the valuation officer's report. The report clearly mentions the reason for premium calculation on land due to its prime location and being "Old Sarat" agriculture land being considered as free hold as is mentioned in Page 2 and Page 4 of valuation report attached with submission. Thus the assessee has offered an explanation which he was able to substantiate. Such explanation was bonafide based on the reliance of assessee on a valuation report of Government Approved Valuer and accordingly he had duly disclosed all the material in his return and during assessment proceedings from the inception of the case which is well placed on record and considered by all the authorities. Thus explanation 1 to Sec 271(l)(c) is not applicable in this case.*
- 3) *The action of the Ld. CIT (Appeals) in not considering properly the ratio of the Gujarat High Court decision in the case of CIT vs. Mandharsinhji P. Jadeja, reported in 148 Taxman HO(Gujarat) is also challenged in this appeal. In the appellant's case also the date of acquisition of the said land as well as the cost of acquisition of the land is not ascertainable as the land was ancestral land. Thus there was difference in working of cost of acquisition of AO and CIT(A) which itself shows that substantiation to explanation of neither of them were based on concrete findings.*
- 4) *The learned CIT(A) And AO has erred in levying penalty as per clause B OF Explanation 1 u/s.271(1)(c) because without giving any accurate findings, they have disregarded the valuation report of a Government Approved Valuer. Once a presumption of concealment is noticed by the officer between reported and assessed income, the burden is on assessee to show cogent reliable evidences. Once the initial onus placed by the explanation has been discharged by him, the onus shifts on the revenue to show that the amount in question constituted the income and not otherwise. In this case the revenue has simply rejected the valuation officer's report without any findings.*
- 5) *In the working of LTCG, the appellant had adopted the fair market value of the sold property (Land) as on 1-4-1981 at Rs. 119/- per sq. yard plus premium totaling to Rs.190/- per sq yard; while the A.O. had adopted the acquisition cost of the year 2001-02 and value at Rs.119/- per Sq. yard (without considering premium & period of holding) which fair market value has now been adopted by the CIT (Appeals) as on 1-4-1981 at Rs.160 per sq yard. The same can be found in Page 15 of the CIT (A) penalty order dated 29.12.2014. Both the A.O. as well as the CIT(Appeals) appear to have estimated the cost of acquisition and therefore, the CIT(A) has arrived at the figure of Net Capital Gains at Rs.5,99,357/-, after the deduction u/s. 54EC of the Income-tax Act. After-all it is an estimate against an estimate of the Long Term Capital Gains - one made by the A.O. and the other made by the CIT (A) vide his appellate order dtd. 31-8-2012 in quantum appeal - and therefore, no penalty u/s. 271(l)(c) could be validly imposed in this case, as per various decisions of the different High Courts in this behalf.*

- 6) *There is no variation in the actual sale price of the land realized, by the appellant and his co-owners. The A.O. and the CIT (A) have adopted Jantri-Rates for sale but they have differed in period of holding and cost of acquisition and therefore, there is variation in the LTCG figures adopted by the A.O. and the CIT(A). The AO had estimated the LTCG at Rs.17,17,973/- on the basis of of Jantri-rates for payment of Stamp duty, while registering the sale deed of the property. On the basis of the actual price for which the land was sold, the appellant had declared the LTCG at NIL, after considering the deduction admissible u/s 54EC of the I. T. Act, 1961.*
- 7) *Both the Authorities have estimated the cost of acquisition as well as the sale price of the land and arrived at different figures of LTCG. The A.O. had estimated the LTCG at Rs.17,17,973/- while the Ld.CIT (A) has confirmed the LTCG at Rs.5,99,357/- as per the working given on page 43 of his order dated 31-8-2012 in quantum appeal and similar stand taken by CIT(A) vide page 15 in his penalty order dated 29/12/2014.*

2. Though the assessee has raised 7 grounds of appeals, the grievance of the assessee in substance is that the learned CIT(A), on facts and circumstances of the case, has erred in upholding penalty of Rs.1,99,259/-.

3. To adjudicate on this appeal, it is sufficient to take note of the fact that the impugned penalty has been imposed on the assessee on account of addition made by the Assessing Officer in relation to computation of capital gains on sale of land. The adjustment made by the Assessing Officer had two facets . (1) Assessing Officer adopted the sale consideration under section 50C on the basis of stamp valuation officer; (2) that the Assessing Officer made adjustment in fair market value of the land as on 01.04.1981 by rejecting approval of valuation report and adopting rate on the basis of comparable sale instances. It is in respect of quantum additions so made in the computation of capital gains, by adopting different figures for the sale proceeds as also for the fair market value as on 01.04.1981 that the impugned penalty is levied. Aggrieved, assessee carried the matter in appeal before the learned CIT(A) but without any success. Assessee is in second appeal before me.

4. We have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. So far as the imposition of penalty in respect of addition in computation of capital gain on the basis of stamp duty valuation under section 50C is concerned, there are decisions of co-ordinate benches holding that such plea is impermissible in law. In one such case, a co-ordinate bench in the case of Chimanlal Manilal Patel vs. ACIT - ITA No.508/Ahd/2010 . A.Y. 2006-07 - vide order dated 22.06.2012 has observed as follows :-

**“5. We have heard the rival contentions and perused the material on record. It is a fact that the addition has been made by the AO in the revisionary proceedings. The addition has been made on the basis of provisions of section 50C. It is not the case of the AO that the assessee has received consideration over and above than that declared in the sales deed. The AO has not disputed the consideration received by the assessee. The addition has been made on the basis of deeming provisions of section 50C. The assessee has furnished all the facts of sale, documents/ material before the AO. The AO has not doubted the genuineness of the documents/details furnished by the assessee. Only because the assessee agreed to the additions because of the deeming provisions it cannot be construed to be filing of inaccurate particulars on the part of the assessee. The assessee agreed to addition on the basis of valuation made by the stamp valuation authority cannot be a conclusive proof that the sale consideration as per the sale agreement is seemed to be incorrect and wrong. In view of these facts we are of the considered view that penalty cannot be levied on the basis of deeming provision. We accordingly delete the same.”**

5. Similarly with respect to quantum addition to the capital gain on the basis of fair market value of the land as on 01.04.1981 there are several decisions of this Tribunal that such an addition cannot also be visited with penalty under section 271(1)(c). In the case of Sathe Biscuit & Chocolate Co. Ltd vs. Dy. CIT . ITA No.495/PN/2010 . A.Y. 2005-06 - order dated 20.03.2012 - another co-ordinate bench of this Tribunal has observed as follows :-

**“6. After going through the rival submissions and perusing the material on record, we find that the assessee has sold its land at dhanori, Pune. The assessee was engaged in the business of manufacturing biscuits and chocolates and stated to have closed its business activities from 1996 onwards due to various problems, manufacturing loss, control over administration and it was not running the administration properly and was not having all records so as to file the returns for A.Y. 2005-06 at relevant part of time. However various queries were raised by the Assessing Officer with regards to capital gain and after rejecting the contention raised on behalf of the assessee, the Assessing Officer considered the capital gain of Rs.22,93,91,745/- which was confirmed by the CIT(A). In second appeal and the Tribunal vide its order dated 6th September 2010 in ITA No. 1568/PN/2008 directed the Assessing Officer to compute the capital gain by taking FMV of the land at Rs. 665/- per sq. mtr as on 1-4-1981. In consequential order, the long term capital gain has been revised by the Assessing Officer at Rs. 8,39,82,576/-. Thus, the Assessing Officer determined the FMV of the land at Rs. 665/- per sq. mtr as against Rs. 15.23 per sq. mtr allowed by the Assessing Officer as against Rs. 1230/- per sq. mtrs as claimed by the assessee. The basis of penalty is non-acceptance of the long term capital loss by the Assessing Officer which was confirmed by the CIT(A). According to the Assessing Officer, the value of the land adopted by the assessee was unrealistic and without any basis. He stated that the assessee has adopted the higher value of the land and thereby reduced the income. Accordingly, the above said FMV of the property was adopted at Rs. 15.23 per sq. mtrs as against the claim of the assessee at Rs. 1230/- per sq mtrs for the purpose of computation of capital gain. Now, the FMV as stated above, has been held to be reasonable at Rs. 665/- per sq. mtrs. In fact the FMV of the land has been the subject matter of penalty which was, according to the assessee, is debatable and rightly so, because the Tribunal has also taken the market value with regards to FMV. The adoption of FMV is a matter of estimate. It may vary person to person and adopting the particular FMV at the advice of approved valuer cannot be the sound basis for invoking the provisions of section 271(1)(c) of the Act. As explained above, the assessee could not file the return in time. Same thing was explained before the Assessing Officer though not accepted by the him at the relevant point of time. The assessee was trying to give explanation with regards to non-filing of the return and to justify its claim of FMV in the computation of capital gain. So there is nothing on record to suggest that the assessee had any intention to conceal the income. This view gets strength from the fact that the assessee had paid advance tax on the long term capital gain arising from the sale of the balance portion of the land. So, the assessee was prevented by reasonable cause for not filing the return of income in time. The assessee bonafidely claimed the capital gain in question. This view gets strength from the judgment of the Himachal Pradesh High Court in the case of CIT Vs. Raghunath Singh Thakur (304 ITR 268) wherein it has been stated that in case the Assessing Officer does not refer the matter to the DVO, the value adopted by the assessee should be accepted the Assessing Officer. In this background, the assessee was under bonafide impression that the FMV adopted by it for the purposes of**

**computation of capital gain is justified. The Hon'ble supreme Court in the case of Reliance Petroproducts Pvt. Ltd. (322 ITR 158) has held that even if the assessee makes an incorrect claim in law, same cannot be stated that the assessee has concealed its income or furnished inaccurate particulars of income. Clause (c) of section 271(1) categorically states that the penalty would be leviable if the assessee conceals particulars of his income or furnishes inaccurate particulars thereof. Moreover, the valuation by approved valuer or otherwise is a matter of estimate. Under facts and circumstances, we hold that the penalty is not justifiable in respect of the addition made on account of computation of capital gain on sale of land at Dhanori. The same is directed to be deleted."**

6. In view of the decisions so rendered by the co-ordinate benches, I am of the considered view that this was indeed not a fit case for levying penalty. I, therefore, delete the impugned penalty. Assessee gets the relief accordingly.

7. In the result, appeal is allowed. Pronounced in the open court today on the 22<sup>nd</sup> day of September, 2017.

Sd/-  
**Pramod Kumar**  
(Accountant Member)

**Dated: Ahmedabad, the 22<sup>nd</sup> day of September, 2017.**

PBN/\*

Copies to:

(1) The appellant  
(3) CIT  
(5) DR

(2) The respondent  
(4) CIT(A)  
(6) Guard File

By order

Assistant Registrar  
Income Tax Appellant Tribunal  
Ahmedabad Benches, Ahmedabad