

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

[Coram: Pramod Kumar, Accountant Member]

ITA No.119/Ahd/2015
Assessment Year: 2010-11

Chinubhai Ambalal Patel

7, Vrundavan Bungalow,
Gulab Tower, B/h. Aakash Flat,
Sola Road, Thaltej, Ahmedabad
[PAN : ABGPP 7139 Q]

.....**Appellant**

Vs.

Income-tax Officer

Ward 6(2), Ahmedabad.

.....**Respondent**

Appearances by:

None for the appellant

Prasoon Kabra for the respondent

Date of concluding the hearing : 05.07.2017

Date of pronouncing the order : 29.08.2017

O R D E R

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 20.09.2014, passed by the learned CIT(A)-XI, Ahmedabad, upholding penalty imposed on the assessee under section 271(1)(c) of the Income Tax Act, 1961 (~~the~~ the Act hereinafter), for the Assessment Year 2010-11.

2. Assessee has raised the following grievances :-

1.1 *The order passed u/s 250 on 20.09.2014 for AY 2010-11 by CIT(A)-XI, Abad upholding the penalty of Rs.4,50,383/- levied u/s 271(1)(c) by AO is wholly illegal, unlawful and against the principles of natural justice.*

1.2 *The Id. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned penalty.*

- 2.1 *The Id. CIT(A) has grievously erred in law and or on facts in confirming the penalty of Rs.4,50,383/- levied u/s 271(1)(c) in respect of addition of Rs.21,39,294/- made towards long term capital gain and receipt of Rs.15,750/- from Astha Buildcon.*
- 2.2 *That in the facts and circumstances of the case as well as in law, the Id. CIT(A) ought not to have upheld the penalty of Rs.4,50,383/- levied u/s 271(1)(c).*

3. To adjudicate on this appeal only a few material facts need to be taken note of. The assessee has filed his return of income on 13th October 2010 declaring total income at Rs.15,86,662/- and agricultural income at Rs.35,500/-. On scrutiny of the accounts it was revealed to the Assessing Officer that assessee has sold two immovable property for Rs.2,00,72,400/- with three other co-owners. He found that stamp duty valuation authorities have valued the property for the purpose of stamp duty at Rs.2,67,04,000/-. With the help of section 50C, the Assessing Officer has adopted sale consideration at Rs.2,67,04,000/-. The assessee has one fourth share which comes out to Rs.66,76,000/-. After adopting this sale consideration, he computed the long term capital gain and made an addition of Rs.21,23,544/-. Apart from that the Assessing Officer has also noted that the assessee has received an amount of Rs.15,750/- from Astha Buildcon and TDS of Rs.1,575/-. These amounts have not been disclosed by the assessee. This fact was brought to the notice of the assessee. He agreed for addition and accordingly addition of Rs.15,750/- was also made. The Assessing Officer in this way had made total addition of Rs.21,39,294/- to the total income of the assessee. He issued show cause notice under section 271(1)(c) inviting explanation of the assessee as to why penalty should not be imposed. According to the Assessing Officer the assessee did not comply with the notices and he imposed a penalty of Rs.4.50,383/- which is

equivalent to the tax sought to be evaded. Aggrieved, assessee carried the matter in appeal before the learned CIT(A) but without any success. Assessee is not satisfied and is in further appeal before me.

4. None appeared on behalf of the assessee but I have heard the learned Departmental Representative, perused the material on record and duly considered facts of the case in the light of applicable legal position.

5. Section 48 of the Income Tax Act provides mode of computation of capital gains. This section contemplates that income chargeable under the head ~~capital gain~~ shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely :- (a) expenditure incurred wholly and exclusively in connection with such transfer, (b) the cost of acquisition of the asset and the cost of any improvement thereafter. Section 50C further provides that where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority for the purpose of payment of stamp duty in respect of such transaction, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration. In other words, full consideration mentioned in section 48 is to be replaced by the consideration on which value of the property was adopted for the purpose of payment of stamp duty.

6. Sub-section (2) of section 50C further contemplates that in case the assessee alleges that stamp duty valuation authority under sub-section (1) exceeds the fair market value of the property, the Assessing Officer may refer the valuation to the capital asset to the Valuation Officer. A peripheral look to the scheme of section 50C would indicate that full sale consideration received by the assessee and required to be considered for the purpose of computing capital gain under section 48 is to be replaced with the help of deeming fiction provided in this. This replacement is further subject to determination of fair market value as contemplated under section 2. Thus an addition to the income of the assessee with the aid of section 50C is only under deeming condition which may vary if a reference to the DVO is being sent under sub-section(2) of section 50C. It would indicate that it is quite difficult to conclusively hold an assessee liable for concealment of facts or furnishing of particulars of income. An assessee may stick to his stand that whatever he has shown as actual consideration and it can be tested by making a reference to the DVO under sub-section (2) of section 50C. Thus an assessee could not be visited with penalty under section 271(1)(c) when an addition is being made with the help of deeming fiction provided in section 50C.

7. As far as other addition of Rs.15,750/- is concerned no elaborate discussion has been made independently in the penalty order. The Assessing Officer has treated both these amounts at par and took a consolidated figure. He has nowhere made out that the assessee has furnished inaccurate particulars of income. Even in the assessment order much discussion is not available on this issue. Considering overall facts and circumstances, I find force in the contentions of the assessee and delete the penalty.

8. In the result, appeal is allowed. Pronounced in the open court today on the 29th day of August, 2017.

Sd/-
Pramod Kumar
Accountant Member)

Ahmedabad, the 29th day of August, 2017

PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *Commissioner*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad