

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH AHMEDABAD

BEFORE, SHRI S. S. GODARA, JUDICIAL MEMBER
AND SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No. 416/Ahd/2015
(Assessment Year: 2010-11)

Alpaben Rajeshbhai Patel
109, Shankar Niwas, Usmanpura,
Shantinagar, Old Wadaj, Ashram
Road, Ahmedabad - 380013

Appellant

Vs.

The I.T.O.,
Ward - 13(4), Ahmedabad

Respondent

PAN: ANGPP4173I

आवेदक की ओर से/By Assessee : A. C. Shah, A.R.
राजस्व की ओर से/By Revenue : Richa Rastogi, Sr. D.R.
सुनवाई की तारीख/Date of Hearing : 09.11.2017
घोषणा की तारीख/Date of
Pronouncement : 18.12.2017

ORDER

PER S. S. GODARA, JUDICIAL MEMBER

This assessee's appeal for assessment year 2010-11 arises against the CIT(A)-XXI, Ahmedabad's ex parte order dated 16.12.2014 in case no. CIT(A)-7/74/13-14, affirming Assessing Officer's action imposing penalty of Rs.12,52,638/-, in proceedings u/s. 271(1)(c) of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case file perused.

2. It emerges at the outset that both the lower authorities have levied the impugned penalty in assessee's case on account of three quantum additions of

Rs.6,37,500/-, Rs.53/- and Rs.615138/- of short term capital gains on account of sale of land, interest income and agricultural income; respectively made in assessment order dated 28.09.2012. The same have already attained finality. The Assessing Officer thereafter has imposed the impugned penalty on account of assessee's failure in filing any explanation at all in the instant proceedings. The assessee did not appear before the CIT(A) as well who has confirmed the above levy of penalty.

3. It is evident from the case file that the above main quantum addition of short term capital gains arose on account of the fact that the assessee and other co-owners had sold seven equal shares than eight in all in the relevant capital asset resulting in the above addition being made in the course of assessment. Both the parties state in the course of hearing that we have heard another co-owners' penalty appeal ITA No.45/Ahd/2015 on 08.11.2017 in case of Pritiben Manibhai Patel wherein the issue is to be remitted back as both of them have to place on record all relevant facts before the Assessing Officer. The said appeal has been accepted for statistical purposes in other words. We therefore follow the very course of action herein as well to restore the instant issue of correctness of the impugned penalty before the Assessing Officer to be adjudicated afresh after affording adequate opportunity of hearing to the assessee.

4. This assessee's appeal is accepted for statistical purposes.

[Pronounced in the open Court on this the 18th day of December, 2017.]

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Ahmedabad: Dated 18/12/2017

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

S.K.SINHA

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee

3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।