

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.1084/Kol/2015
Assessment Year:2010-11

Sri Sachindra Nath Kayal Vill. Makhla-2, P.O. & P.S. Uttarpara, Dist.Hooghly Pin 712247 [PAN No.AFEPK 7726 E]	बनाम / V/s.	ITO Warrd-23(1), Aayakar Bhawan, Khadinamore, Chinsurah, Hooghly Pin-712101
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri S.P. Datta, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Saurabh Kumar, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	24-10-2017
घोषणा की तारीख/Date of Pronouncement	26-12-2017

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-6, Kolkata dated 09.07.2015 pertaining to assessment year 2010-11. Penalty levied by Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 30.04.2013.

Shri S.P. Datta, Ld. Advocate appeared on behalf of assessee and Shri Saurabh Kumar, Ld. Departmental Representative appeared on behalf of Revenue.

2. Sole effective issue raised by assessee is that Ld. CIT(A) erred in confirmed the addition made by Assessing Officer for ₹10,98,667/- on account of penalty levied u/s. 271(1)(c) of the Act.

3. The assessee, during the year under consideration has sold its long term assets and earned an income of ₹53,33,336/- only as capital gains. However, the impugned income was not offered to tax but the disclosure of the same was made in the balance sheet filed along with the income tax return. The amount of capital gains was shown as investment in LIC Market Plus. Thus, it is clear that the assessee has earned long term capital gain which was not offered to tax but disclosure was made in the balance-sheet. However, AO in the quantum assessment order has made the addition of Long Term Capital Gains earned by assessee and initiated the penalty proceedings and he finally imposed the penalty u/s 271(1)(c) of the Act for ₹10,98,667/- to the extent of 100% of tax sought to be evaded.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that the LTCG income was not offered to tax due to lack of knowledge of income tax and amount of capital gains was duly disclosed in the balance sheet. Therefore, it cannot be said the income was concealed deliberately. However, Ld. CIT(A) disregarded the contention of assessee and confirmed the order of AO by observing as under:-

“6. I have considered the facts of the case and the appellant’s submissions. I find that the undisputed factual position is that the appellant had not declared any long term capital gains on amount of sale of land but had disclosed the sales proceeds as increased in capital in his balance sheet along with the corresponding investment. The appellant accepted the addition in the assessment and paid the demand raised. He has prayed for deletion of the penalty on the ground of ignorance of the person preparing the computation of income and payment of the entire demand. In my view, the appellant’s explanation is very vague and far-fetched. It is very difficult to accept that the appellant omitted to disclose the huge amount of long-term capital gain only on account of ignorance. The appellant’s explanation cannot be accepted to be satisfactory or bona-fide. It was observed by the Hon’ble Delhi High Court, while holding that penalty has to be imposed where the appellant is not able to show that the mistake/omission is bonafide, in the case of Commissioner of Income-tax v. Zoom Communication (P) Ltd.[2010] 191 Taxman 179 (Delhi)/[2010] 327 ITR 510 (Delhi)/[2010] 2233 CTR 465 (Delhi)as follows:

‘The Court cannot overlook the fact that only a small percentage of the Income-tax Returns are picked up for scrutiny. If the assessee makes a claim which is not only incorrect in law but is also wholly without any basis and the explanation furnished by him for making such a claim is not found to be bona fide, it would be difficult to say that he would still not be liable to penalty under section 271(1)(c) of the Act. If we take the view that a claim which is wholly untenable in law and has absolutely no foundation on which it could be made, the assessee would not be liable to imposition of penalty, even if he was not acting bona fide while making a claim of this nature, that would give

licence to unscrupulous assessee to make wholly untenable and unsustainable claims without there being any basis for making them, in the hope that their return would not be picked up for scrutiny and they would be assessed on the basis of self-assessment under section 143(1) of the Act and even if their case is selected for scrutiny, they can get away merely by paying the tax, which in any case, was payable by them. The consequence would be that the persons who make claims of this nature, actuated by a mala fide intention to evade tax otherwise payable by them would get away without paying the tax legally payable by them, if their case are not picked up for scrutiny. This would take away the deterrent effect which these penalty provisions in the Act have.'

7. Considering the above observations of the Hon'ble Court and the failure of the appellant to discharge the onus put on him by explanation 1 to section 271(1)(c) to establish that the explanation given by him in relation to the addition is bona fide, it has to be held that the Assessing Officer rightly imposed penalty of Rs.10,98,667/- on the appellant. The fact that the appellant paid the additional tax payable on the enhanced income does not provide him immunity from computation of the amount of tax sought to be evaded in terms of explanation 4 to section 271(1)(c). The penalty of Rs.10,98,667/- imposed by the Assessing Officer is confirmed. "

Being aggrieved by this order of Ld. CIT(A) assessee came in second appeal before us.

5. Before us Ld. AR for the assessee filed paper book which is running pages from 1 to 30 and he reiterated the same arguments that were made before Ld. CIT(A) whereas Ld. DR vehemently relied on the order of Authorities Below.

6. We have heard the rival contentions of both the parties and perused the material available on record. In it undisputed fact that assessee has earned LTCG which was not offered to tax. It is also undisputed that the disclosure of the same made in balance-sheet of the assessee. Thus, we note that non-offering of LTCG to the tax was not deliberate. It was out of ignorance of assessee. In such circumstances, the penalty u/s. 271(1)(c) of the Act cannot be levied. In holding so, we find support and guidance from the judgment of Hon'ble Rajasthan High Court in the case of *Chandrapal Bagga vs. Income-Tax Appellate Tribunal* on 31.01.2003 Equivalent citations (2003) 182 CTR Raj, 185, 2003 261 ITR 67 Raj, wherein the Hon'ble Court has held:-

"11. When the assessee has disclosed the transactions which is the basis for capital gains tax and though wrongly claimed exemption from the capital gains tax, but that cannot be a case of penalty under Section 271(1)(c) of the Income-tax Act, 1961. If it has claimed any exemption after disclosing the relevant basic facts and under

ignorance of the provisions of the Act of 1961, and not offered that amount for tax, in such cases, penalty should not be imposed. In such cases rather it is the duty of the Assessing Officer to ask for further details and tax the income if it is liable to tax and that has been done in this case.

12. In view of these facts on record, we see no reason to sustain the order of the Tribunal. The order of the Tribunal is set aside and penalty is cancelled. The appeal stand allowed accordingly.”

In the background of the above discussions and precedent we, therefore hold that imposition of penalty in the present case cannot be sustained and the same is directed to be cancelled. We order accordingly.

7. In the result, assessee's appeal stands allowed.

Order pronounced in open court on 26/12/2017

Sd/-

(न्यायिक सदस्य)

(S.S.Viswanethra Ravi)

Judicial Member

*Dkp, Sr.P.S

दिनांक:- 26/12/2017 कोलकाता / Kolkata

Sd/-

(लेखा सदस्य)

(Waseem Ahmed)

Accountant Member

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

1. अपीलार्थी/Appellant-Sri Sachindra Nath Kayal, Vill. Mkhla-2, P.O.& P.S. Uttarpara, Dist. Hooghly Pin-712247
2. प्रत्यर्थी/Respondent-ITO Ward-23(1), Aayakar Bhawan, Khadinamore, Chinsurah, Hooghly, Pin 712101
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary

Head of Office/DDO

आयकर अपीलीय अधिकरण,

कोलकाता