

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,
NEW DELHI

BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER

ITA No. 5012/DEL/2012 [A.Y. 2009-10]

Shri Raj Kumar
F - 44, Pandav Nagar
Gali No. 13, 3rd Floor
New Delhi

Vs.

The I.T.O,
Ward- 36(4)
New Delhi

PAN : ANYPK 8149 H
[Assessee]

[Respondent]

Date of Hearing : 27.12.2017
Date of Pronouncement : 02.01.2018

Assessee by : Shri Rajesh Mahna, Adv
Shri Ramanand, Adv

Revenue by : Shri Ashima Neb, Sr. DR

ORDER

This appeal of the assessee arises from the order of the ld. CIT(A), New Delhi vide order dated 22.06.2017 for A.Y. 2009-10 imposing penalty in an ex party order passed u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short].

2. Briefly stated, the facts of the case are that during the course of assessment proceedings, the Assessing Officer added a sum of Rs. 36,79,790/- to the total income of the assessee against the

returned income of Rs. 1,64,482/-. The addition was in respect of undisclosed sale consideration of Rs. 10 lakhs and disallowance on improvement of the plot of the land sold by the assessee. Aggrieved by the said order of the Assessing Officer, the assessee went in appeal before the ld. CIT(A) who vide order dated 26.12.2012 confirmed the addition in respect of concealed consideration of Rs. 10 lakhs and the cost of improvements amounting to Rs. 1,40,000/- addition Rs. 75,400/-. The Assessing Officer thereafter imposed penalty u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] vide order dated 31.03.2014. Aggrieved further, the assessee went in appeal before the ld. CIT(A) against the imposition of penalty.

3. Before the ld. CIT(A), the assessee contended that one of the cheques amounting to Rs. 10 lakhs bounced for in-sufficient funds and therefore, the consideration was shown at Rs. 28,54,000/-. The assessee has filed a suit against the purchaser for the remaining amount of Rs. 10 lakhs. He also did not deny the consideration agreed in the sale deed. However, the ld. CIT(A) was not satisfied with the submissions made by the assessee and upheld the penalty of Rs. 10 lakhs made u/s

271(1)(c) of the Act. Now the assessee is in appeal before me against the said penalty of Rs. 10 lakhs u/s 271(1)(c) of the Act.

4. I have heard the rival submissions and perused the relevant material on record. There is no dispute to the fact that the assessee was required to declare capital gain on the sale consideration of Rs. 38,54,000/-, but he has declared the same at Rs. 28,54,000/-. The reasons for not declaring Rs. 10 lakhs as sale consideration was that cheque for Rs. 10 lakhs was bounced for insufficient fund and the assessee filed suit against the purchaser u/s 138 of the Negotiable Instrument Act. The fact of the suit against the purchaser has not been disputed by either of the authorities below and also the assessee has not received Rs. 10 lakhs as stated by the ld. counsel for the assessee. The ld. counsel for the assessee further stated that the sale consideration of Rs. 10 lakhs as and when received shall be declared in full and tax shall be paid accordingly. I find the arguments of the ld. counsel for the assessee to be convincing that there is no real income in the hands of the assessee. Therefore, the amount of Rs. 10 lakhs has not been received so far and having declared a sum of Rs. 28.54 lakhs, the assessee has computed the capital gains. The income of Rs. 10 lakhs cannot be stated to have been accrued in the facts and

circumstances of the present case. Accordingly, addition so made by the Assessing Officer and confirmed by the ld. CIT(A) is directed to be deleted.

5. In the result, the appeal of the assessee in ITA No. 5012/DEL/2012 is allowed.

The order is pronounced in the open court on 02.01.2018.

Sd/-
[B.P. JAIN]
ACCOUNTANT MEMBER

Dated: 02nd January, 2018

VL/

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi