

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

**Before Shri Chandra Poojari, AM & Shri George George K, JM**

ITA No.486/Coch/2016 : Asst.Year 2008-2009

Sri.K.Rajagopal Menon IX/514A, Ragam Niwas Old Post Office Road Maradu, Kochi-682 304. <b>PAN :AAMP1132B.</b>	Vs.	The Dy.Commissioner of Income-tax Central Circle - 1 ERnakulam.
(Appellant)		(Respondent)

Appellant by : Sri. George Joseph  
Respondent by : Sri. A.Dhanaraj, Sr.DR

<b>Date of Hearing : 16.01.2018</b>	<b>Date of Pronouncement : 29.01.2018</b>
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**ORDER**

**Per George George K., JM**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 29.09.2016. The relevant assessment year is 2008-2009.

2. Briefly stated the facts of the case are as follow:-

2.1 The assessee is an individual. He had sold an ancestral property during the previous year relevant to the assessment year 1008-2009. The impugned property was acquired prior to the year 1981. For the purpose of computing long term capital tax, the assessee adopted fair market value as on 01.04.1981 at the rate of Rs.20,000 per *Cent*. According to the assessee, the fair market value as on 01.04.1981 was

adopted at Rs.20,000 per *Cent* based on oral information he had received from the concerned village office. The assessee had also claimed a sum of Rs.10,00,000 as deduction, being brokerage paid for the sale of property.

2.2 The assessment was completed by taking the fair market value as on 01.04.1981 at the rate of Rs.600 per *Cent* instead of Rs.20,000 per *Cent* adopted by the assessee. The A.O. for fixing the fair market value at the rate of Rs.600 per *Cent* had relied on document No.5394/1981 in Survey No.108/3 of Marad Village. According to the Assessing Officer, the document relied on by him is with regard to sale of a property near the assessee's ancestral property. As regards the brokerage paid amounting to Rs.10,00,000, the Assessing Officer did not grant any deduction while computing the long term capital gain since the assessee was not able to substantiate his claim of payment of brokerage with any documentary evidence.

2.3 Aggrieved, the assessee preferred appeal to the first appellate authority. The CIT(A) referred the matter to the Department Valuation Officer to determine the FMV of impugned property as on 01.04.1981. The Department Valuer fixed the FMV as on 01.04.1981 at the rate of Rs.19,000 per *Cent*. However, the CIT(A) did not accept this valuation of the Department Valuer since according to him the DVO did not refer to any land transaction in that particular area during the relevant period. The CIT(A) relied on the document dated

08.03.1984, which was submitted by the assessee himself which had shown a sale price of Rs.4,500 per *Cent* as on 08.03.1984. The CIT(A) following the working back principle, determined the FMV as on 01.04.1981 at Rs.3,879 per *Cent*. As regards the expenses claimed on brokerage, the assessee did not press his case before the CIT(A) in quantum assessment. No further appeal was preferred by the assessee before the appellate authority as regards the quantum assessment.

3. In the meanwhile, penalty proceedings were initiated for the reason that the assessee had suppressed income from long term capital gains by showing FMV as on 01.04.1981 on a exaggerated amount and had falsely claimed payment of brokerage to the tune of Rs.10 lakh. According to the Assessing Officer, this was a deliberate attempt on the part of the assessee to evade tax and such concealment was liable for penalty u/s 271(1)(c) of the Income-tax Act, 1961. The assessee raised objections to the initiation of penalty proceedings on the hearing date, i.e., on 28.02.2014. The contentions raised by the assessee are reproduced in para 7 of the order of the Assessing Officer imposing penalty u/s 271(1)(c) of the I.T.Act. The Assessing Officer, however, rejected the contentions raised by the assessee and imposed minimum penalty of Rs.13,90,610.

4. Aggrieved by the order imposing penalty u/s 271(1)(c) of the I.T.Act, the assessee preferred an appeal to the first

appellate authority. The CIT(A) dismissed the appeal of the assessee and confirmed the imposition of penalty. The relevant finding of the CIT(A) reads as follow:-

*"5. In strict interpretation of the provisions of Section 271(1)(c), which in its intent and design, provides to put a check on evading the tax liability, by relying upon inaccurate particulars. In the instant case also, the facts suggest that the appellant has attempted on both the grounds i.e. on account of claiming higher Fair Market Value, as the cost of acquisition i.e. @ Rs.20,000/- per cent, as against Rs.3,879/- cent determined by the CIT(A) and, the cost of brokerage of Rs.10 lakhs for which the appellant had nothing to substantiate. Such attempts definitely are intended to lower the tax liability. Thus, the appellant is held to be liable for the concealment of income within the meaning of section 271(1)(c). Accordingly, the penalty levied by the Assessing Officer, is upheld."*

5. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. Brief written submission has been filed by the learned AR. As regards the payment of brokerage amounting to Rs.10 lakh, the learned AR submitted as follows:-

***"A. Payment of brokerage amounting to Rs.1,0,00,000/-***

1. *The appellant entered into an agreement with a land aggregator, Shri. Anil Kumar Sharma, for the sale of 41.5 cents of land. The sale deed was executed in favour of Colossal Projects (P) Ltd. a group company of Unitech Ltd., New Delhi.*

2. *A group of 10 persons acting as a group were*

*instrumental for completing the deal. A total amount of Rs.10 lakhs was paid to the ten brokers of which three were paid through account payee cheques. The other seven were paid in cash.*

3. *The assessing officer took the statement of only two persons, who could not confirm providing the services.*

4. *The Appellant could not furnish evidences to establish the authenticity of the transactions other than the receipts collected from the brokers.*

5. *While rejecting the claim of Rs.10,00,000 as expenses, neither the assessing officer nor the CIT(A) could appreciate that it is impossible for the appellant to connect with the a large buyer and conclude a transaction of this value without the support of brokers."*

5.1 As regards the adoption of FMV as on 01.04.1981, the contentions raised by the assessee read as follows:-

### **B. Adoption of Fair Market Value**

1. *We submit that the Learned CIT (Appeals) ought to have appreciated that the basis for computation of indexed cost of acquisition was based on oral information received from the village office which was reconfirmed by a report of the valuation officer. He has erred in considering that the appellant had concealed particulars of his income or furnished inaccurate particulars while his return was entirely based on information received from persons with appropriate authority, which was further substantiated by the valuation officer appointed by the income tax department.*

2. *Penalty under section 271(1)(c) cannot be imposed unless the assessee either acted in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of his obligations. The only recourse available to the general public for arriving at the value of land as existing over 30 years on 01/04/1981 prior to making the declaration is to approach the village office to get inputs of fair market value prior to 1.4.1981. It is evident that the assessee had relied on information of a government employee as it was further corroborated by the department's own valuation officer. Accordingly, the appellant cannot be stated to have furnished inaccurate particulars nor of having any intention to evade tax.*

3. *In order to fall under the purview of section 271(1)(c), there should exist "concealment" or "furnishing of inaccurate information". The offence of concealment is a direct attempt to hide an item of income or a portion thereof from the knowledge of the authorities. The assessee has furnished details and provided explanations all in good faith and to the extent available with him. It is submitted that the consideration was disclosed in the income tax return filed by the appellant. Thus, there is no question of concealment of income. What has occurred is only a difference of opinion with the assessing officer."*

5.2 On the other hand, the learned Departmental Representative relied on the findings / conclusions of the Assessing Officer and the CIT(A).

6. We have heard the rival submission and perused the material on record.

6.1 As regards the claim of expenses on brokerage amounting to Rs.10 lakh, the assessee has not been able to substantiate with evidence that he has made the payment of commission to the brokers. In the quantum assessment, the assessee had withdrawn the appeal on this ground. Since the assessee has not been able to substantiate that he had made payment of Rs.10 lakh as brokerage, we can only hold that it is a false claim made by the assessee to reduce the incidence of tax as regards the income arising on account of long term capital gains. Therefore, we confirm the imposition of penalty with regard to disallowance of claim of expenses on brokerage amounting to Rs.10 lakh. Moreover, we find, no specific ground has been raised by the assessee with regard to imposition of penalty against the disallowance of claim of brokerage of Rs.10 lakh. Therefore, the penalty imposed on account of disallowance of brokerage is confirmed.

6.2 As regards the adoption of fair market value as on 01.04.1981 at the rate of Rs.20,000 per *Cent*, it is the claim of the assessee that he had got oral information from the village office and accordingly he had calculated the cost of acquisition of the ancestral property by adopting Rs.20,000 per *Cent*. The CIT(A) had referred the matter to the DVO to fix the fair market value as on 01.04.1981. The relevant portion of the Valuation Officer's report is reproduced below:-

#### ***"4.0 Specification***

#### 4.1. General:

*57.83 cents of land in Sy. No. mentioned above is an Ancestral property inherited by the assessee. On enquiry from the local people, the assessee and the Maradu Village Officer the land was under cultivation during those period. Now the land is dry one covered by thorny bushes and various kinds of vegetation. It is very close to National Highway Bypass but, there is no direct access. The adjacent lands were also purchased by the same M/s. Colossal Projects Pvt. Ltd.*

#### 4.2. Method:

*No guideline value was prevailing during the period 1981-1984 and there was no standardized system to arrive the Fair Market Value of the property. The Sub-Registrar, Thripunithura has also informed the same and the registrations were done with the mutual consent of the seller and the buyer prevailing those period which were far less than the actual fair value. The village officer Maradu also informed that there was no standardized guideline value during that period and he had conducted a local enquiry to ascertain the market value from the persons who are residing in the locality prior to 1980 to till date. The village officer Maradu has certified the Fair Market Value of the said property Rs.19,000 - Rs.20,000 per cent during 01.04.1981.*

### **5.0 RATES**

*Considering all. the above facts and there was no guideline value during the period of valuation, the rate certified by the village officer Maradu Rs,19,000 per cent (Rupees Nineteen Thousand only) has been considered as the rate during 01.04.1981. Hence the cost of 57.83 cents of land works out to Rs.19,98,770 - say Rs. 11,00,000 (Rupees Eleven Lakhs only)*

#### 5.1. Comments on the Registered Valuer's Report:

*No Registered Valuers's Report has been submitted by the assessee and hence no comments are offered in this report.*

### **6.0. FINAL VALUATION**

*Having considered all the evidence and all the relevant materials gathered by me during the physical inspection, I estimate the cost of the property of 57.83 cents on Re.sy No.178/4 and 178/6 (old sy. No 343/1 and 343/2), Maradu Village, Ernakulam District, as Rs.11,00,000 (Rupees Eleven Lakhs only) as on 01.04.1981."*

6.3 The Valuation Officer mainly relies on the Village Officer's certificate for fixing the FMV as on 01.04.1981 at the rate of Rs.19,000 per Cent. The CIT(A) in quantum assessment did not accept the value fixed by the Valuation Officer at the rate of Rs.19,000 per Cent and had estimated the fair market value at the rate of Rs.3,879 per Cent. The Assessing Officer has imposed the penalty u/s 271(1)(c) of the Act based on the FMV fixed by the CIT(A). The value adopted by the assessee as on 01.04.1981, according to him, is based on an input given by the Village Officer. The assessee's adoption of FMV at the rate of Rs.20,000 per Cent cannot be said to be totally exaggerated since the DVO of the Department based on the Village Officer's certificate had fixed the FMV as on 01.04.1981 at the rate of Rs.19,000 per Cent. The FMV fixed by the Assessing Officer as on 01.04.1981 is only at the rate of Rs.600 per Cent, whereas the CIT(A) had fixed the FMV at the rate of Rs.3,879 per Cent. The assessee's adoption of FMV is in consonance with DVO's value of FMV as on 01.04.1981. Therefore, it cannot be said that the adoption

of FMV at the rate of Rs.20,000 per *Cent* as on 01.04.1981 by the assessee is not in good faith and with deliberate intention to reduce the incidence of tax arising on long term capital gains.

6.4 For levy of penalty u/s 271(1)(c), there should not be a "concealment" or "furnishing of inaccurate information". The offence of concealment is a direct attempt to hide an item of income or a portion thereof from the knowledge of the authorities. The assessee has furnished details and provided explanations in good faith to the extent known to him. All the necessary information were furnished in the income tax return filed by the assessee and it cannot be stated that there was a concealment of income by the assessee. In this context it is relevant to mention following judicial pronouncements:-

(i) In the case of *Dilip N Shroffvs. Joint CIT (2007) 291 ITR 519 (SC)*, the Hon'ble Apex Court held that – "*A duty is cast on the assessee to make correct disclosure of income, but if such disclosure is based on the opinion of an expert, who is otherwise also a registered valuer having been appointed in terms of a statutory scheme, only because his opinion is not accepted or some other expert gives another opinion, the same by itself may not be sufficient for arriving at a conclusion that the assessee has furnished inaccurate particulars*". The Hon'ble Apex Court also held that – "*penalty under section 271 (1)(c) may be imposed only if it is proved that the assessee*

*has consciously made the concealment or furnished inaccurate particulars of income".*

(ii) The Hon'ble Madras High Court in the case of *CIT vs. K.R Chinni Krishna Chetty [2000] 246 ITR 121 (Mad)*, had held that *"the mere revision of the income to a higher figure by the assessing authority does not automatically warrant an inference of concealment. Concealment implies some deliberate act on the part of the assessee in withholding the true facts from the authorities. The fact that the valuer arrived at a higher figure than the one reported by the assessee does not by itself lead to the inference that there has been concealment"*.

(iii) The Hon'ble Apex Court in the case of *Price Waterhouse Coopers (P) Ltd. vs. CIT [2012] 348 ITR 306 (SC)*, it had held that where the assessee has acted in bona fide manner, penalty under section 271 (1 )(c) cannot be made applicable.

(iv) The law laid down in *Dilip N Shroff vs. Joint CIT (2007) 291 ITR 519 (SC)* was reaffirmed by the Apex Court in *CIT vs Reliance Petroproducts [2010] 322 ITR 158 (SC)*.

(v) The Hon'ble Supreme Court in para 13 of its judgment in the case of *T Ashok Pai vs CIT 292 ITR 11 (SC)*, observed that *"it is, therefore, true that if an explanation given by the assessee with regard to the mistake committed by him has been treated to be bona fide and it has been found as of fact that he had acted on the basis of wrong legal advice, the question of his failure to discharge his burden in terms of*

*explanation appended to Section 271(1)(c) of the Income Tax Act would not arise".* In the instant case, the assessee had relied on the information he collected from a competent Govt. official attached to Revenue Department. The assessee did not have any authoritative source to confirm the market value of a land applicable in 1981 otherwise than obtain a confirmation from the Revenue Authorities of the State Government. The oral confirmation obtained by the assessee from the Village Office while preparing his tax returns were corroborated by the authoritative confirmation of the Valuer appointed by the Department. Therefore, the difference of opinion between the Assessing Officer / CIT(Appeals) and that of the Valuer appointed by the Department itself cannot be a ground for imposing penalty u/s 271(1)(c) of the Income-tax Act. For the aforesaid reasons and the judicial pronouncements mentioned above, we delete the penalty imposed u/s 271(1)(c) of the Act with reference to the difference in FMV as on 01.04.1981. It is ordered accordingly.

7. In the result, appeal filed by the assessee is partly allowed.

Order pronounced on this 29<sup>th</sup> day of January, 2018.

Sd/-  
**(Chandra Poojari)**  
ACCOUNTANT MEMBER

Sd/-  
**(George George K.)**  
JUDICIAL MEMBER

Cochin ; Dated : 29<sup>th</sup> January, 2018.  
Devdas\*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT (Central), Kochi.
4. The CIT(A)-IV, Kochi.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)  
**ITAT, Cochin**