

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

BEFORE, SHRI S. S. GODARA, JUDICIAL MEMBER  
AND SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No. 414/Ahd/2016  
(Assessment Year: 2009-10)

Asst. Commissioner of Income Tax,  
Circle- 2(1)(2), 1<sup>st</sup> Floor, Navjivan Trust  
Building, Ahmedabad-380 009

Appellant

Vs.

M/s. Jagdishchandra T. Thakkar,  
422, Satyagrah Chhavni, Satellite,  
Ahmedabad – 382 445

Respondent

PAN: ABRPT9213E

राजस्व की ओर से/By Revenue : Shri Mudit Nagpal, Sr. D.R.  
आवेदक की ओर से/By Assessee : Shri S. N. Divatia, A.R.  
सुनवाई की तारीख/Date of Hearing : 01.02.2018  
घोषणा की तारीख/Date of  
Pronouncement : 08.02.2018

**ORDER**

**PER S. S. GODARA, JUDICIAL MEMBER**

This Revenue’s appeal for assessment year 2009-10 arises against the CIT(A)-4, Ahmedabad’s order dated 17.12.2015, in case no. CIT(A)-4/141/DCIT-Cir-2(1)(1)/14-15, reversing Assessing Officer’s action imposing penalty of Rs.16,59,845/-, 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. We notice at the outset that the impugned penalty proceedings pertain to quantum issue of disallowance of work-in-progress amounting to Rs.52lacs. There is no dispute that the assessee had computed his long term capital gains on sale of the capital asset in question. He thereafter chose to claim the impugned deduction as work-in-progress u/s.54 of the Act. He however submitted in course of scrutiny proceedings that the relevant construction could not be carried out due to the fact that the competent authority AUDA had reviewed its approval. The Assessing Officer accordingly disallowed the amount in question in assessment order dated 14.11.2011 as upheld in CIT(A)'s quantum order dated 15.10.2012.

3. We advert to the impugned penalty proceedings. The Assessing Officer placed heavy reliance on above quantum developments to conclude that the assessee's act and conduct in claiming work-in-progress deduction of Rs.52lacs attracted both the limbs of concealment as well as furnishing inaccurate particulars of income u/s.271(1)(c) of the Act. He therefore levied impugned penalty amounting to Rs.16,59,845/- in order dated 27.03.2014.

4. The CIT(A) reverses Assessing Officer's action as under:

*"5. Submission of the appellant has been considered w.r. to the assessment order, penalty order and the findings given by the CIT(A), while deciding the quantum appeal. The only ground of appeal is against the penalty of Rs. 16,59,845/- imposed by the AO u/s 271(1)(c) of the Act. The appellant sold one immovable property during the year and claimed exemption u/s 54 of the Ac to the extent of Rs.99,27,155 /- consisting of Rs.47,27,155/- cost of land and Rs.52 lakhs towards the cost of construction. As the construction was not completed within three years, as conditions prescribed under the relevant provisions of the Act. The AO disallowed the total exemption of Rs.99,27,155/-. While deciding the appeal, the CIT(A) (Appeal) allowed the exemption to the extent of cost of land i.e. Rs.47,27,155/- but did not allow claim of Rs.52 lakhs as construction cost because construction was not completed. These facts are not objected by the appellant also.*

*5.1 The AO imposed the penalty upon Rs.52 lakhs stating that the appellant concealed income and thus submitted inaccurate particulars of income by submitting incorrect claim of deduction u/s 54 of the Act. The appellant contended that the construction could not be completed because Ahmedabad Urban Development Authority i.e. AUDA did not grant permission to construct, as the plot was to be included in propose'd TP scheme. The appellant further submitted that permission of construction was granted by AUDA vide order No.JSK/2010/162 dtd. 06-08-20 10 and the society also gave permission vide letter dated 13-10-2010 in pursuance to the said permission from the AUDA. The appellant paid the prescribed fee for such permission. However, the AUDA informed the appellant vide letter dated 16-09-2010 that the construction upon the plot cannot be undertaken as the*

*said plot is proposed to be included in new TP Scheme. As the permission of construction withdrawn by the Town Planning Authority i.e. AUDA, construction could not be completed. The appellant stated that the reason for non-completion of construction is beyond his control and for which he should not be penalized. The appellant cited case laws in the case of Smt. Rajneet Sandhu vs. DCIT (49 SOT 7) (CHD) and Smt. V. A. Tharabhai vs. DCIT (14 ITR (TRb) 15)(Chenn) to support his contention.*

*5.2 After going through the, facts of the case in totality, as mentioned above, the appellant cannot be held responsible for concealing income and furnishing inaccurate particulars of income. The appellant submitted all the facts in the return of income filed and during the assessment proceedings. The reasons for non-construction of house were beyond the control of the appellant for which he cannot be held accountable and punished with penalty u/s 271(1)(c) of the Act. Looking the facts of the case and the case laws cited the penalty imposed by the AO is not found justified, hence it is deleted. This ground of appeal is allowed.”*

5. Both the learned representatives strongly reiterate their respective stands in favour of and against the impugned penalty. Learned Departmental Representative vehemently contends that the assessee had raised an altogether false claim of work-in-progress amounting to Rs.52lacs u/s.54 of the Act. He however fails to dispute the CIT(A)'s categorical finding that the competent authority "AUDA" had in fact granted permission to the concerned society on 06.08.2010 followed by intimation letter dated 16.09.2010 that their said plot was proposed to be included in a new TP scheme. All these facts sufficiently indicate that the assessee's deduction claim of Rs.52lacs in question was indeed based on documentary evidence. We accordingly find no substance in Revenue's sole grievance seeking to revive the impugned penalty as deleted in lower appellate proceedings.

6. This Revenue's appeal is accordingly dismissed.

[Pronounced in the open Court on this the 08<sup>th</sup> day of February, 2018.]

Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER  
Ahmedabad: Dated 08/02/2018

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

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / 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 ।