

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD 'D' BENCH, AHMEDABAD**

[Coram: Pramod Kumar AM and Madhumita Roy JM]

ITA No.247/Ahd/2018
Assessment Year: 2012-13

Kamleshkumar Bhailalbhai Patel,
*Haridas ni Khadaki,
Mota Adadh,
Anand – 380 001.
[PAN : BLQPP 5766 A]*

.....**Appellant**

Vs.

**Dy. Commissioner of Income Tax,
(International Taxation), Baroda.**

.....**Respondent**

Appearances by

Mukund Bakshi *for the appellant*
Saurabh Singh *for the respondent*

Hearing concluded on: 11.05.2018
Order pronounced on : 16.05.2018

O R D E R

Per Pramod Kumar, AM:

1. By way of this appeal the assessee appellant has challenged correctness of Learned CIT(A)'s order dated 18th December, 2017, upholding penalty of Rs.9,49,420/- imposed on the assessee under section 271(1) (c) of the Income Tax Act, 1961, for the assessment year 2012-2013.
2. The quantum disallowances, in respect of which impugned penalty is levied, are two fold – first, with respect to disallowance of deduction of Rs.44,30,600/- under section 54EC; and – second, with respect to decrease in indexed fair market value of the asset by Rs.1,78,157/-. Let us deal with the status and nature of these two quantum additions.

3. As regards the disallowance of deduction under section 54EC, we have noted that, vide order dated 22.12.2017, a co-ordinate bench has deleted the quantum of disallowance by Rs.42,00,000/-. As regards the balance amount of Rs.2,30,660/- it is contention of the assessee that the assessee was well within time for making the investment and he declared all these details at the point of time of filing the Income Tax return. There was thus no concealment of particulars or furnishing of inaccurate particulars. A subsequent inaction or marginal reduction in quantum of deposit under section 54EC qualifying investment, cannot, therefore, be reason enough to hold the assessee guilty of concealment of income or furnishing of inaccurate particulars. This plea of the assessee has not found favour with any of the authorities below.

4. As regards the decrease in indexed cost of acquisition as on 01.04.1981, it is on account of the fact that the Departmental Valuation Officer has adopted the area of 3,996 sq. meters on the date of sale whereas, the total area, for which such consideration was taken into account, was 3,946 sq. meter. The reduction in area was on account of adjustment due to town planning scheme. The value adopted as on 01.04.1981 was, however, only for 2,966 meters --- so far as computation of capital gains was concerned. The authorities below rejected the plea of the assessee that cost of acquisition of entire 3,946 sq. meters is to be taken into account for the sale of 2,996 sq. meters land. Not only the adjustment was, accordingly, made to fair market value of land as on 01.04.1981, the penalty under section 271(1)(c) of the Act was also imposed for the same by the Assessing Officer. The Learned CIT(A) has confirmed the said penalty and the assessee is in further appeal before us.

5. We have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

6. We find that the reasonable explanation for both the above quantum additions which, irrespective of the fact that these have not been accepted in the assessment proceedings, are worth being accepted in the present penalty proceedings. A subsequent marginal reduction in qualifying deposits under section 54EC, as Learned Counsel rightly pleads, cannot be treated as concealment of income or furnishing of inaccurate particulars. As regards the explanation that when reduction in area is due to subsequent change in situation, the entire cost of the plot is to be taken into account, we see prima facie merits in principle. In the light of these discussions, as also bearing in mind entirety of the case and the fact that an overwhelming part of the disallowance

has already been deleted by the co-ordinate bench in quantum proceedings, we uphold the plea of the assessee and delete the impugned penalty.

7. In the result, appeal is allowed. Pronounced in the open court on this 16th day of May, 2018.

Sd/-
Madhumita Roy
Judicial Member)

Sd/-
Pramod Kumar
(Accountant Member)

Dated: 16th May, 2018.

*PBN/**

Copies to: (1) The appellant (2) The respondent
(3) CIT (4) CIT(A)
(5) DR (6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad