

IN THE INCOME-TAX APPELLATE TRIBUNAL “J” BENCH MUMBAI
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER
AND SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 25/Mum/2017 (Assessment Year 2011-12)

Late Sanjay Jain 1103-3, Prime Downtown Mall (Plaza Panchsheel), Hughes Road, Girgaon Chowpatty, Mumbai-400007. PAN: AACPJ5178Q	Vs.	ACIT, CC- 24-26, Mumbai.
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Appellant

Respondent

Appellant by

: None

Respondent by

: Miss Arju Goradia (Sr. DR)

Date of Hearing

: 18.06.2018

Date of Pronouncement

: 18.06.2018

Order Under Section 254(1) of Income –tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. The instant appeal is directed by legal heir’s of assessee under section 253 of the Income-tax Act (the Act) against the order of Id. Commissioner of Income-Tax (Appeals)-51 [Id. CIT(A)], Mumbai dated 29.02.2016 for Assessment Year 2011-12. The assessee has raised the following grounds of appeal:

1. (a) *The Learned Commissioner of Income Tax (Appeal) erred in confirming the levy of penalty of Rs. 4,36,156/- u/s 271(1)(c) on the income offered during the assessment proceedings being tax on Long Term Capital Gain.*
(b) *The Learned Commissioner of Income Tax (Appeal) ignored the facts and explanation offered by the assessee under the circumstances under the income was not offered while filing the original return of income.*

2. Brief facts of the case are that the assessee filed return of income for assessment year 2011-12 on 27 September 2011 declaring total income of Rs. 10,70,310/-. The assessment was completed on 27th December 2014

under section 143(3). The assessing officer while passing the assessment order determined the total income at Rs. 32,79,500/- after making various addition including Long-term Capital Gain (LTCG) of Rs.21,17,260/-. The assessing officer also initiated penalty proceedings under section 271(1)(c) at the time of passing the assessment order. The assessing officer levied the penalty of Rs. 4,36,156/- under section 271(1)(c) vide order dated 06.08.2014. On appeal before Commissioner (Appeals) the action of assessing officer was confirmed. Therefore, further aggrieved by the order of learned Commissioner (Appeals) the legal heir of assessee has filed present appeal before us.

3. None appeared on behalf of appellant despite the service of notice through registered post. The notice sent for the hearing fixed on 18.06.2018 has returned back, after due intimation to the appellant. Therefore, we left no option except to hear the submissions of Id. Departmental Representative (DR) for the revenue and decide the case on the basis of material available on record. The learned DR for the revenue supported the order of authorities below. The learned DR further submits that though, the assessee has died, the appeal was filed by his legal heir. The assessee failed to substantiate the claim before the assessing officer about the Long-term Capital Gain claimed on the sale of immovable asset. The appellant has neither come forward to substantiate his grounds nor

filed any documentary evidence; therefore, the appeal filed by appellant is liable to be dismissed.

4. We have considered the submission of learned DR for the revenue and perused the material available on record. We have noted that during the assessment proceedings the assessing officer made addition of long term capital gain of Rs. 21,17,260/-. The assessing officer made addition after considering the explanation furnished by assessee. The assessee contended before the assessing officer that he has sold a flat for a consideration of Rs. 1.70 Crore to M/s Rockweel Properties. The said flat was purchased by assessee in assessment year 2008-09. The assessee also furnished copy of purchase and sale deed of the said flat/ asset. The assessee also contended that neither the possession of the flat was received nor the total consideration of sale was received, therefore, LTCG was not declared in the return of income. The contention of the assessee was not accepted by assessing officer holding that the payment details shows that the assessee purchased flat for Rs. 1.10 Crore and sold the same at the consideration of Rs. 1.70 crore, out of which the assessee has received 1.25 Crore during the financial year. Therefore, the assessing officer made the addition on account of LTCG of Rs. 21,17,165/-. The assessing officer after providing opportunity of hearing to the assessee levied the penalty under section 271(1)(c) on the addition of LTCG. We have noted that the assessee remained ex-parte before first appellate authority. Therefore, the

ex parte order was passed by Id. Commissioner (Appeals). Before us, neither the appellant nor his representative attended the proceeding despite service of notice of hearing. The appellant has not filed any documentary evidence to substantiate his contention raised in the present appeal. Therefore, we do not find any merit in the grounds of appeal raised by appellant. In the result the grounds of appeal raised by appellant are rejected.

5. In the result, appeal filed by appellant is dismissed.

Order pronounced in the open court on 18 .06.2018.

Sd/-
G.S. PANNU
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 18.06.2018

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Copy of the Order forwarded to :

1. Assessee
3. The concerned CIT(A)
5. DR "J" Bench, ITAT, Mumbai

2. Respondent
4. The concerned CIT
6. Guard File

BY ORDER,
Dy./Asst. Registrar
ITAT, Mumbai