

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 2559/Del/2015
Assessment year: 2005-06**

**ITO, WARD 1(3)
AAYAKAR BHAWAN,
13-A SUBHASH ROAD,
DEHRADUN**

(Appellant)

**VS. INDER SINGH,
C/O BHARAT CLOTH HOUSE,
MAIN BAZAR, DOIWALA,
DEHRADUN
(PAN: AWKPS415F)
(Respondent)**

Appellant by: Shri Ravi Kant Gupta, Sr. DR
Respondent by: Sh. Sandeep Sapra, Adv.

**Date of hearing: 31.05.2018
Date of pronouncement: 29.08.2018**

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

This Appeal is preferred by the Department against the order dated 27.2.2015 passed by the Ld. CIT(Appeals), Dehradun for the A.Y. 2005-06. The Ld. CIT(A) has deleted the penalty of Rs. 14,90,000/- imposed u/s. 271(1)(c) of the Income Tax Act, 1961.

2. The brief facts of the case are that assessee filed return of income declaring total income of Rs. 1,49,520/- on 27.3.2006 which was processed u/s. 143(1) of the Act on 31.3.2006. Later, the case of the assessee was taken up under compulsory scrutiny. Thereafter, the assessment was completed on total income of Rs.26,89,020/- against a returned income of Rs.1,49,520/-. During the course of assessment, the

A.O. observed that the assessee had introduced a capital of Rs.41 lakhs on account of sale of agricultural land at Khasra No. 1567 at Village Balawala in which he enjoyed 50% share. During the course of scrutiny copies of the sale agreement showing therein transfer of total land of area of 1.153 hectares in lieu of Rs.82 lakhs were produced. The sale agreements were concluded between the assessee and his son on the one part and Shri Rajeev Malhotra and Shri J.S. Rauthan on the other. The A.O. further observed that that the said agreement was not registered and hence was a plain paper agreement. He, therefore, asked the assessee to furnish copy of the sale deeds. He also asked the assessee to produce the parties with whom they had entered into agreement, but the assessee recorded his inability to do so. Thereafter summons were issued to the two parties namely Shri Rajeev Malhotra and Shri J.S. Rauthan and their statements were recorded in the presence of the assessee's counsel. Both denied that they had ever executed this agreement or advanced money like Rs.15 lakhs or Rs.82 lakhs to the assessee and his son., though they accepted the signing of the agreement, which they said had been cancelled on the same date. Right of cross examination was allowed and the statements were given to the counsel for his comments. The A.O. rejected the objections filed by the assessee that the agreement was a plain paper agreement and that it did not bear the same sanctity as agreements/contract registered before an authority or statutory body as per the procedural/rules prescribed under the law of land. Furthermore, no other evidence had been furnished by the assessee in support of the

claim. However, the assessee was given one more opportunity to furnish copy of sale deeds, dates of sale of land, names of purchasers of land with their addresses etc. In response, the assessee filed a list of 16 persons to whom the land was sold between 6.5.2004 and 28.3.2005. The A.O. observed that the total sale consideration received from these 16 persons as per the sale deeds were Rs.31,69,000/-. He observed that as the assessee's share of the land was half, half of the proceeds would be his. He concluded that the assessee was not able to produce any satisfactory evidence in support of capital introduced made by him to the tune of Rs.41 lakhs except the sale of land to the 16 persons as mentioned above. Accordingly, he held that a sum of Rs.15,84,500/- i.e. 50% of Rs.31,69,000/- was explained and the rest Rs.25,15,500/- remained unexplained and the same was added to the income of the assessee.

2.1 Aggrieved, with the assessment order, the assessee preferred appeal before the Ld. CIT(A), who vide his order dated 18.5.2011 held that: *"the AO proceeded to verify the claim of the assessee about introduction of capital as per the return of income. The AO has not substituted anything from his own side while giving his finding on the genuineness of the transactions resulting in the flow of funds as claimed by the assessee. The AO has again gone by the facts in the return of income in giving a finding about the relevant financial year of the transaction and in examining only those persons who have been claimed by the assessee to have advanced sums of money to him. It is again seen*

that the AO has rightly concluded about the unverifiable nature of the transactions claimed by the assessee and has rightly brought the same to tax u/s 68 of the Act considering that the transactions claimed did not pass the test laid down in the case Shankar Industries Vs. CIT 114 ITR 689 (Cal.). Accordingly, it was held that the action of the AO was justified in bringing to tax Rs.25,15,550/-."

2.2 In view of the fact that the assessment had been confirmed in first appeal, the A.O. sought the assessee's reply as to why penalty should not be levied on the assessee u/s 271(1)(c) for the unexplained cash credit of Rs.25,15,500/-. The A.O. noted that the assessee had failed to file any satisfactory reply on the matter and he concluded that the assessee has concealed the particulars of his income and furnished inaccurate particulars of income and, therefore, he was liable for penalty u/s 271(1)(c) of the I.T. Act, 1961. Accordingly, he imposed a penalty of Rs. 14,90,000/- being 125% of the total tax on confirmed additions by the CIT(A)-II, Dehradun.

2.3 Aggrieved with the penalty order, the Assessee appealed before the Id. CIT(A) who vide his impugned order dated 27.2.2015 has allowed the appeal of the Assessee by observing that there has not been any concealment of income by the assessee, in the sense that the assessee has not tried to show any taxable income as non-taxable and there has not been any inaccurate particulars of income filed, in that the assessee has not claimed any income as anything other than what it is and

accordingly held that it does not appear to be a fit case for the imposition of penalty u/s. 271(1)(c) of the Act and deleted the same.

2.4 Now the Revenue is in appeal before the Tribunal and has raised the following grounds of appeal:-

- i) That the Ld. CIT(A) has erred in law on facts in deleting the penalty u/s. 271(1)(c) of the I.T. Act, 1961, amounting to Rs. 14,90,000/- without appreciating the fact that the additions made in the assessment order u/s. 143(3) of the I.T. Act, 1961, has already been confirmed by his learned predecessor.
- ii) That the order of the Ld. CIT(A) be set aside and that of AO be restored.

3. Ld. Sr. DR appearing on behalf of the Department placed extensive reliance on the findings and observations of the Assessing Officer and vehemently argued that Ld. CIT(A) had erred in deleting the penalty.

4. In response, the Ld. AR submitted that identical addition had been made in the case of the assessee as well as in the case of Sushil Kumar, the son of the Assessee. Although the quantum addition was upheld in the case of the assessee, the quantum addition in the case of Sushil Kumar son of the Assessee was deleted and therefore, no penalty was imposable. The AR further submitted that the facts of the case were identical as the dispute was regarding the validity of sale deed to which both the assessee and his son were parties. The Ld. AR further drew our attention to the findings recorded by the ITAT in the case of the assessee's son wherein, it had been held that there was nothing in the agreement to sell

to indicate that there was a transfer of the plot within the meaning of section 2(47) of the Act at the time signing of the agreement. The AR further submitted that apart from this all the facts were before the AO and no concealment of income could be alleged to have been committed on the part of the Assessee and neither had any inaccurate particulars of income been furnished. The AR also placed reliance on the findings of Ld. CIT(A) in this regard.

5. We have heard the rival submissions and perused the material on record. The findings of the Ld. CIT(A), while deleting the penalty in dispute are contained in para no. 13, 14 & 15 of the impugned order, and the same are being reproduced hereunder for ready reference:-

"13. The facts that are clear are that the assessee did enter into an agreement for sale with Shri Rajeev Malhotra and Shri J.S. Rauthan. This has not been denied by the parties. However, they have denied executing the agreement and submitted that it was cancelled on the same date. The CIT (A)-I had correctly pointed out that the fact of advance cannot be denied as the agreement was signed by both the parties as well as the advocate and the same spoke of the advance having been made. It is also clear that as per the terms of said agreement, the assessee was bound to transfer the title of the property to those persons dictated by the second party. It, therefore, follows that the second party was actually a middleman or speculator who was making an investment in

land to sell it at a higher profit to other buyers and attempting to stay out of the picture so that they would not have any liability for the payment of stamp duty or income tax. Subsequently it appears that a large part of the transaction in the property has taken place outside the regular channels as the sale deeds have been concluded for a fraction of the value stated in the agreement for sale. It appears most likely that the entire exercise was made with a view to evading stamp duty or to facilitate purchase by people who did not have the necessary capital to justify the purchase. But it has had the unintended consequence of not leaving any audit trail whereby the assessee could prove the fact that he had received the money on the sale of the land. There is however, a circumstantial evidence that would indicate that the money that was received, was on account of the sale of the agricultural land and that is the value as stated in the agreement for sale. The agreement was concluded at Rs.82 lakhs and the land is seen to have been transferred at Rs.31,69,000/- as per the sale deeds. It is inconceivable that the value of land would fall so drastically within the space of 6 to 8 months without some major defect in title of the land being detected leading to speculative buy or some major crisis in the family of the seller resulting in distress sale. The absence of these would indicate that infact the land was

transacted at the price given in the agreement for sale but the sale consideration was heavily suppressed before the sub-registrar and consequently stamp duty was evaded. The net result of this possibility is, that while the assessee is in possession of money the sale of land, he is not able to offer proof of the source as the audit trail is missing. However, going by the theory of preponderance of probability, it is clear that the excess money lying in the account of the small retail trader who had sold over 1.153 hectares of land, would be from the sale of this land and since this land is agricultural land and is exempt from capital gains, no tax would be leviable on account of this money under the Income Tax Act.

14. With regard to the issue regarding consideration of sales of agricultural land of Rs.25,15,500/- in the F.Y. 2004-05, my Ld. Predecessor has held that there is nothing in the agreement for sale to indicate that there was a transfer of the plot within the meaning of section 2(47) of the I.T. Act, 1961 at the time of signing the agreement. In view of this finding, the entire difference in capital cannot be said to arise in the assessment year 2005-06 and the capital gains on account of the sale deeds that have been executed in the F.Y. 2005-06 can only be brought to tax in the A.Y. 2006-07.

15. What emerges from the above facts is that there has not been any concealment of income by the assessee, in the sense that the assessee has not tried to show any taxable income as non-taxable and there has not been any inaccurate particulars of income filed, in that the assessee has not claimed any income as anything other than what it is. In the circumstances, it does not appear to be a fit case for the imposition of penalty u/s 271(1)(c). The penalty is, therefore, deleted."

5.1 Ld. Sr. DR at the time of arguments before us could not point out any factual inaccuracy in the findings recorded by the Ld. CIT(A). Ld. Sr. DR also could not substantiate his arguments with cogent reasoning that the assessee had either concealed his income or furnished inaccurate particulars of income. It is very much evident that the relevant details were very much before the AO at the time of assessment proceedings. We also note that ITAT, Delhi Bench in ITA No. 3680/Del/2012 (AY 2005-06) vide order dated 2.11.2015 in the case of Sushil Kumar (assessee's son) had dismissed the Revenue's Appeal wherein the Department had challenged deletion of addition of quantum by the Ld. CIT(A). The Assessee's appeal bearing ITA No. 3784/Del/2011 was however restored to the office of the Ld. CIT(A) to decide the issue afresh after affording opportunity of being heard to the assessee and also keeping in mind the order passed on identical issue by the Ld. First Appellate Authority in the case of Sushil Kumar. However, the Ld. CIT(A) took a view divergent to

the view held by him in the case of assessee's son Sushil Kumar and upheld the quantum addition. The Ld. CIT(A), in the impugned order, has rightly observed that two sets of views could not have been possible on some such facts, especially because the impugned agreement to sell was signed by both i.e. father and the son. In view of the factual matrix of the case as well as keeping in mind that divergent views cannot be taken on identical facts, we do not find any reason to interfere in the findings of the Ld. CIT(A) on the issue in dispute and hence, we dismiss the grounds raised by the Department by upholding the action of the Ld. CIT(A) in deleting the penalty in dispute.

6. In the result, the appeal of the revenue stands dismissed.

Order pronounced in the Open Court on **29.08.2018**.

Sd/-

**(PRAMOD KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: **29.08.2018**
'SRB'

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order
ASSTT. REGISTRAR