

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एकल सदस्यीय", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'SMC' CHANDIGARH**

**श्रीमती दिवा सिंह, न्यायिक सदस्य
BEFORE: SMT. DIVA SINGH, JM**

आयकर अपील सं./ITA No. 885/CHD/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Shri Anil Kumar, Prop. M/s Luxmi Traders, Grain Market, Kharar, Distt. SAS Nagar, Mohali.	बनाम VS	The ITO, Ward 6(4), Mohali.
स्थायी लेखा सं./PAN No: AAVPK6895N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Mohit Dhiman, CA

राजस्व की ओर से/ Revenue by : Smt. Zenia Handa, Sr.DR

सुनवाई की तारीख/Date of Hearing : 20.11.2018

उद्घोषणा की तारीख/Date of Pronouncement : 28.11.2018

आदेश/ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 28.11.2017 of CIT(A)-2, Chandigarh pertaining to 2013-14 assessment year wherein levy of penalty imposed u/s 271(1)(c) of the Income Tax Act by the AO has been upheld.

2. The relevant facts of the case are that as a result of the additions made in the assessment proceedings, penalty of Rs. 1,95,557/- was levied by the AO. The factual background leading to the levy of penalty as brought out in the assessment order is evidenced from paras 3 and 4 of the same. The assessee in the facts of the present case is engaged in the business of manufacturing of cattle feed etc. and trading of the foodgrains items. A specific property was sold in the year under consideration and instead of mentioning the collector rate mentioned in the Registry as Rs. 55,60,500/-, the assessee while computing the short term capital gain calculated it on the basis of Rs. 55 lacs and the mistake pointed out by the AO was accepted at the assessment stage. As a result of this, addition of Rs. 60,500/- was made to the income of the assessee. Apart from this, the AO also made an addition of Rs. 5,94,560/- as the interest on loan was debited to assessee's P&L Account. It was accepted that the assessee had taken a loan for investment in land and the specific land had not been used in the business in the year under consideration. The reply of the assessee dated 31.12.2015 extracted in the assessment order offered in the course of the assessment proceedings was not accepted leading to the addition. Since the reply is relevant for determining the issue of penalty, it is extracted hereunder:

" The interest on loan taken from. Bank was rightly debited to the profit & loss account due to reason that the loan from Bank was not taken for acquiring land at Balongi, but for business purpose the loan was in nature of LAP (Loan against Property) and not term loan for acquiring this land and in absence of any colour of loan taken from bank, it was incorrect to say the loan was taken for purchasing land at Balongi particularly when the captioned assessee had sufficient capital at the time of purchasing asset and loan taken was only to tune of Rs. 45 lacs only. But still in order to keep harmony with the department and to buy peace of mind, we agree for the addition subject to no penalty for concealment or prosecution."

3. The additions made by the AO admittedly were not challenged by the assessee, however in the penalty proceedings, the assessee vehemently assailed the penalty order before the AO as well as the CIT(A). The submissions advanced before the tax authorities are reiterated before the ITAT. The Id. Sr.DR relies upon the orders.

4. I have heard the rival submissions and perused the material on record. Considering the facts and taking note of the fact that assessee has returned an income of Rs. 8,83,430/- from the business of manufacturing of cattle feed etc., taking note of the fact that assessee is not habitual defaulter, I find that the penalty imposed on the grounds of bonafide mistake in wrongly mentioning the sale amount as opposed to the collector rate while computing the short term capital gain and debiting the interest paid to its P&L account, in the peculiar facts and circumstances of the present case considering the application filed, does not attract penalty. Being satisfied with the explanation offered as per record on behalf of the assessee, penalty is directed to be quashed. Said order was pronounced in the Open Court at the time of hearing itself.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 28.11. 2018.

Sd/-

(दिवा सिंह)
(DIVA SINGH)

न्यायिक सदस्य/Judicial Member

“पूनम”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant -
2. प्रत्यर्थी/ The Respondent -
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar