

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

BEFORE SH. N. S. SAINI, ACCOUNTANT MEMBER  
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

**I. T. A. No. 452(Asr)/2014**  
Assessment Year: 2008-09

Income Tax Officer, \Ward 3(3), Vs. Shri Rajiv Mehra Prop.  
Amritsar M/s H.D. Mehra Chemical Works,  
Lahori Gate,  
Amritsar

**(Appellant)**

PAN No. ABPQM 1297C  
**(Respondent)**

Appellant by : Sh. Ashwani Kalia, CA  
Respondent by: Sh. Bhawani Shankar, DR

Date of Hearing : 13.2.2019  
Date of Pronouncement : 14.2.2019

**ORDER**

**Per N.S. SAINI, AM:**

This is an Appeal by the Revenue directed against the Order by the Commissioner of Income Tax (Appeals), Amritsar dated 5.5.2014.

2. The sole issue involved in this appeal is that CIT(A) erred in deleting the levy of penalty of Rs. 37,07,496/- imposed by the AO u/s 271(1)(c) of the I.T. Act, 1961 (hereinafter referred to as "Act", in short).

3. The brief facts of the case are that the AO passed the order u/s 143(3) of the Act on 30.12.2010 and made the following additions:-

a) Addition on account to Long Term Capital Gains Rs. 84,17,645/-

b) Disallowance out of car expenses	Rs. 45,142/-
c) Disallowance out of telephone expenses	Rs. 11,483/-
d) Disallowance out of interest	Rs. 4,69,267/-

4. On appeal, the Ld. CIT(A) reduced the addition under the head 'Long Term Capital Gains' to Rs. 84,17,645/- to Rs. 1,70,737/-.

5. The Revenue carried the matter in appeal before the Tribunal and the Tribunal reversed the order of the CIT(A).

6. Thereafter, the AO levied penalty u/s 271(1)(c) on account of furnishing of inaccurate particulars of income by the assessee of Rs. 84,17,645/- and levied penalty of 200% tax sought to be evaded by the assessee at Rs. 37,07,496/-

7. The assessee carried the matter in appeal before the CIT(A) and contended that assessee had made mere legal claim for the purpose of indexation and indexed cost of acquisition should be taken as on 1.4.1981 in view of the fact that the assessee has received the property by inheritance / will from his father, therefore, it cannot be said that the assessee submitted any particulars which was false and for this he placed reliance on the decision of the Hon'ble Supreme Court in the case of Reliance Petro products P Ltd 322 ITR 158, wherein, the Hon'ble Supreme Court held that a mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars. The CIT(A) therefore, deleted the penalty observing that the AO has not proved that claim was

false anywhere in the penalty order and earlier CIT(A) has also given findings that indexed cost should be adopted as on 1.4.1981, thus, there is difference of opinion on this issue and he was also of the opinion that there was no transfer of property by virtue of family settlement dated 2.9.2003, hence, the penalty levied u/s 271(1)(c) of the Act for furnishing of inaccurate particulars of income is deleted. He observed that the AO has levied penalty @ 200% of the tax sought to the evaded without giving any reason for levying penalty on such a higher rate. The action of the AO levying penalty @ 200% is not sustainable and accordingly he held that the grounds of appeal are decided in favour of the assessee as he has neither concealed any particulars nor furnished inaccurate particulars of income and allowed the appeal of the assessee.

8. The Ld. DR relied on the orders of the AO.

9. After considering the rival submissions and perusing the material on record, we are of the considered view that the Ld. DR simply relied upon the order of the AO. He could not point any specific error in the order of the CIT(A). He also could not controvert the findings of the CIT(A) which is to the effect that the AO has not proved the claim made in the return of income as false in the penalty order and that CIT(A) earlier had given a findings that indexed cost should be adopted as on 1.4.1981 and thus there was difference of opinion on the issue and that he was also of the opinion that there was no transfer of property by virtue of family settlement dated 2.9.2003. Therefore, we find no reason to interfere with the order of the CIT(A) which is hereby confirmed. The grounds of appeal are dismissed.

10. In the result, the appeal of Revenue is dismissed.

Order pronounced in the open court on 14.2.2019.

Sd/-  
**(N. K. Choudhry)**  
**Judicial Member**

Sd/-  
**(N.S. Saini)**  
**Accountant Member**

Date: 14.02.2019

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Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

		Date	Initial	
1.	Draft dictated on	13.2.19		Sr.PS/PS
2.	Draft placed before author	14.2.19		Sr.PS/PS
3.	Draft proposed & placed before the Second Member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr. P.S./P.S.	14.2.19		Sr.PS/PS
6.	Kept for pronouncement on	14.2.19		Sr.PS/PS
7.	File sent to the Bench Clerk	15.2.19		Sr.PS/PS
8.	Date on which file goes to the A.R.			
9.	Date on which file goes to the Head Clerk			
10.	Date of dispatch of Order			