

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2141/PUN/2016
निर्धारण वर्ष / Assessment Year : 2007-08

Smt. Kokilaben M. Shah & Hitesh M. Shah,
(Legal Heirs of Late Shri Mahendrakumar Shah),
35, New Bazar, Khadki , Pune – 411003

PAN : ACHPS8878F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 8(4), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri V.L. Jain
Revenue by : Shri Sanjeev Ghei

सुनवाई की तारीख / Date of Hearing : 06-02-2019

घोषणा की तारीख / Date of Pronouncement : 25-04-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-1, Pune dated 17-06-2016 for the assessment year 2007-08 confirming levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. Shri V.L. Jain appearing on behalf of the assessee submitted that the assessee is running a small stationery and gift shop. During the period relevant to assessment year under appeal the assessee along with other co-owners had sold a plot of land for a total consideration of Rs.80,00,000/-. The said plot was jointly purchased by the assessee along with the other three persons on 26-09-1983 for a total consideration of Rs.48,000/-. The assessee was having 1/4th share in the property. From his share of consideration, the assessee invested Rs.5,00,000/- in Rural Electrification Corporation bonds and another sum of Rs.3,00,000/- was deposited by the assessee on 30-03-2007 in specified Capital Gain Account Scheme. Since, the assessee invested Capital Gains arising from sale of land, the assessee did not disclose the same in return of income. However, in the Balance sheet as on 31-03-2008 the aforesaid investments were duly reflected. The Id. AR referred to the Balance Sheet of assessee at page 3 of the paper book. The Assessing Officer initiated penalty proceedings u/s. 271(1)(c) of the Act in respect of Long Term Capital Gains not disclosed by the assessee. The Assessing Officer vide order dated 30-06-2010 levied penalty of Rs.2,89,262/- in respect of addition of Rs.14,46,310/- for concealment of income.

2.1 Aggrieved by the order levying penalty, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) granted part relief to the assessee by reducing amount of Rs.3,00,000/- invested by the assessee in specified Capital Gains Account Scheme and directed the Assessing Officer to levy penalty u/s. 271(1)(c) of the Act on the remaining amount of Rs.11,46,310/-. The Id. AR submitted that the authorities below have erred in initiating and levying penalty for concealment of income. The assessee has duly reflected

the investment made in Rural Electrification Corporation bonds and deposits made in specified SBI Capital Account Scheme in its Balance sheet. Non-disclosure of Long Term Capital Gain in the return of income was a bonafide mistake. The assessee was under the impression that since, the investments have been made as per provisions of the Act there is no need to disclose Long Term Capital Gain in the return of income. The ld. AR in support of his contentions placed reliance on the decision of Hon'ble Andhra Pradesh High Court in the case of Commissioner of Income Tax Vs. Saniya Mirza in Income Tax Appeal No. 526 of 2011 decided on 09-02-2012.

3. On the other hand Shri Sanjeev Ghei representing the Department vehemently defended the impugned order. The ld. DR submitted that the assessee has deliberately concealed income arising from Long Term Capital Gains. The ld. DR prayed for confirming levy of penalty u/s. 271(1)(c) and dismissing the appeal of assessee.

4. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee in appeal is against confirming of penalty on undisclosed Long Term Capital Gain Rs.11,46,310/-. Undisputedly, the assessee along with other co-owners of plot of land had earned Long Term Capital Gain on sale of plot of land. Purportedly, the assessee earned Long Term Capital Gain of Rs.19,46,310/- on the sale of plot of land. The assessee invested Rs.8,00,000/- from the said Capital Gain in Rural Electrification Corporation bonds and specified SBI Fixed Account Scheme. The investments made by the assessee have been reflected in the Balance sheet. The Commissioner of Income Tax (Appeals) has confirmed levy of

penalty u/s. 271(1)(c) on Rs.11,46,310/-. After analyzing the facts of the case we are of considered view that it is not a case of concealment of income u/s. 271(1)(c) of the Act. Since, the assessee has duly reflected the investments made in the Balance sheet, it can at the most be a case of furnishing inaccurate particulars of income. The Assessing Officer has invoked wrong charge of section 271(1)(c) for levy of penalty, hence, the penalty levied is liable to be quashed. Accordingly, the penalty order dated 30-06-2010 and the subsequent proceedings arising there from are set aside.

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

Order pronounced on Thursday, the 25th day of April, 2019.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 25th April, 2019
RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Pune
4. The Pr. Commissioner of Income Tax-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune