

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1259/JP/2018
निर्धारण वर्ष / Assessment Year: 2007-08

Smt. Krishna Devi Saiwal, Mohalla-Chah Pappu, Kedal Ganj, Alwar.	बनाम Vs.	I.T.O., Ward 1(3), Alwar.
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: ERAPS 1992 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Smt. Poonam Roy (DCIT)

सुनवाई की तारीख / Date of Hearing : 02/05/2019
उदघोषणा की तारीख / Date of Pronouncement : 06/06/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id.CIT(A), Alwar dated 12/09/2018 for the A.Y. 2007-08 in the matter of imposition of penalty U/s 271(1)(c) of the Income Tax Act, 1961 (in short, the Act).

2. In this case, the A.O. has levied penalty with reference to addition made on account of capital gain income by determining sale consideration U/s 50C of the Act and disregarding the actual sale

consideration mentioned in the sale deed. By the impugned order, the Id. CIT(A) confirmed the action of the A.O., against which the assessee is in further appeal before the ITAT

3. Rival contentions have been heard and record perused. The A.O. has levied penalty U/s 271(1)(c) of the Act with respect to addition made U/s 50C of the Act under the head capital gains.

4. On merit it was submitted by the Id AR that penalty u/s 271(1)(c) is not leviable where income is assessed on the basis of deemed consideration u/s 50C as revenue has failed to produce any evidence that assessee actually received more than the amount shown to have been received by the assessee. Reliance in this regard was placed on the following decisions:

Shri Jhabar Singh Vs. ITO ITA No.912/JP/2014 order dated 17.04.2017 (Jaipur) (Trib.)

From the record I found that during course of assessment proceedings, the A.O. noticed that the assessee had sold immovable property for Rs. 13,00,000/-. The AO, however, adopted the sale consideration at Rs.63,09,000/- on the basis of DLC rate determined by the Collector, Stamps, by invoking the provision of section 50C and thereafter initiated penalty proceedings u/s 271(1)(c) on the ground

of concealment. Thus, the AO levied penalty u/s 271(1)(c) on the difference between the stated sale consideration and the DLC rate adopted by the Collector, Stamps.

5. The ITAT, Jaipur Bench after relying on the decision of Co-ordinate Bench in case of Anita Beniwal vs. ITO in ITA No. 743/1P/2012 and also on the judgement of Hon'ble Calcutta High Court rendered in case CIT vs. Madan Theaters Ltd. 263 CTR 7 had deleted similar penalty by holding as under:-

"In the present case also, the facts are identical as in the case of Anita Beniwal. In this case also the penalty has been levied on the basis that the actual sale consideration was lesser than the value adopted by the Stamp Valuation Authority. The Revenue has not brought any material on record suggesting that the assessee had received actual consideration as adopted by the Stamp Valuation Authority. Therefore, we do not see any reason for taking a different view as adopted by the Co-ordinate Benches of this Hon'ble Tribunal, at the Hon'ble Calcutta High Court in the case of CIT vs. Madan Theatres Ltd. We therefore direct the Assessing Officer to delete the penalty."

5. The issue is also covered by the decision of the ITAT Delhi Benches in the case of Ashwani Jaipaty Vs DCIT (2018) 53 CCH 0340 (Del. Trib). However, no contrary decision was placed by the Id AR in spite of Bench asking for the same.

6. In view of the above facts and circumstances and respectfully following the decision of Coordinate Bench of Delhi ITAT, I do not find any merit in the penalty so imposed by the A.O. U/s 271(1)(c) of the

Act with respect to addition made under deeming provisions of Section 50C of the Act. Hence, I direct the A.O. to delete the penalty.

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

Order pronounced in the open court on 06th June, 2019

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 06th June, 2019

*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Krishna Devi Saiwal, Alwar.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 1(3), Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1259/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar