

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR  
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ ITA No.103/JP/2019  
निर्धारण वर्ष / Assessment Year :2007-08

A.C.I.T, Circle-2, Jaipur	बनाम Vs.	M/s. Golcha Minerals P.Ltd., Golcha Trade Centre, M.I Road, Ajmeri Gate, Jaipur
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No. AAACCG6614R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri A.S. Nehra, JCIT, Id.DR  
निर्धारिती की ओर से / Assessee by: Shri A.B. Ungayan, CA, Id.AR

सुनवाई की तारीख / Date of Hearing : 15/04/2019  
उदघोषणा की तारीख / Date of Pronouncement : 10/06/2019

आदेश / ORDER

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

This is an appeal filed by the revenue against the order of Id.CIT(A)-1, Jaipur dated 16/11/2018 for the A.Y. 2007-08 in the matter of imposition of penalty of Rs. 21,00,000/- u/s. 271(1) (c) of the Income Tax Act, 1961 (in short, the Act).

2. Rival contentions have been heard and record perused.
3. The facts in brief are that in this case the AO levied penalty with respect to addition(s) made by him AO u/s. 50C of the Act. The AO in the assessment order dated 29.12.2009, held that the Stamp Duty Valuation of this land on the date of sale was Rs. 1,08,71,100/-.

Therefore, he substituted this amount for the actual sale price disclosed in the sale deed u/s. 50C and computed the long-term capital gain at Rs. Rs. 82,42,920/- and added Rs. 76,71,100/- to the total income as long term capital gain. The AO also levied penalty of Rs.21,00,000/- u/s. 271(1)(c) of the Act with respect to addition(s) so made.

4. The Id. CIT(A) by the impugned order deleted the penalty by observing as under:

*" 3.1.2 Determination:*

- (i) The brief facts of the case are that an addition of Rs.76,69,300/- was made to the income of the appellant as the AO has invoked the provisions of section 50C of the Act by adopting the sale consideration as taken by the stamp duty authorities for the purpose of charging stamp duty. The above addition was upheld by the Id. CIT(A) as well as by the Hon'ble ITAT. Subsequently, the AO has imposed a penalty of Rs.21,00,000/- u/s. 271(1) (c) of the Act.*
- (ii) During the appellate proceedings, it was the contention of the appellant that the differential income is only because of deeming provision of section 50C and the AO has not established that such differential consideration was actually received by the appellant or the appellant has concealed the income or furnished inaccurate particulars of income. Thus, it was submitted by the appellant that on such deeming provision, penalty cannot be imposed u/s. 271(1)(c) of the Act. In support of its contention, it placed reliance upon a number of judicial pronouncements.*
- (iii) I have duly considered the rival of the appellant, penalty order and the material placed on record. I find merit in the contention of the appellant that merely on the applicability of section 50C of the Act, it cannot be said*

*that the appellant has concealed income or furnished inadequate particulars of income. Due to the applicability of section 50C of the Act, the AO has made an addition of Rs.76,69,300/- on account of long-term capital gains. Therefore, due to the applicability of provisions of Section 50C of the Act, there was an addition to the extent of Rs.76,69,300/- and this addition was not because the appellant has concealed its income or furnished inadequate particulars of income or in respect of detection of concealed income. It may be mentioned that in the case of **CIT Vs. Fortune Hotels & Estates Pvt. Ltd** [2014] 52 taxmann.com 330(Bom.), it has been held by the Hon'ble Bombay High Court that penalty cannot be imposed with reference to deemed income u/s. 50C of the Act. In the case of CIT vs. Madan Teatres Ltd [2014] 42 taxmann.com 26, it was held by Hon'ble Calcutta High Court that "actual amount received on sale was offered for taxation and it was only on the basis of deemed consideration, proceedings u/s.271(1)(c) were initiated. The revenue has failed to produce any iota of evidence that the appellant actually received one paisa more than the amount shown to have been received by him."*

(iv) *Similar view were held by the Hon'ble ITAT, Jaipur in the case of Anita Beniwal Vs. ITO in ITA No. 742/JP/12 and in the recent judgement dated 18.01.2018 in the case of Rajiv Gupta Vs. ACIT in ITA No. 845/JP/2017 by considering a number of judicial pronouncements. These judicial pronouncements are clearly applicable to the facts of the instant case under consideration, therefore, respectfully following the same, it is held that the AO was not justified in imposing penalty of Rs. 21,00,000/- U/s 271(1) (c) of the Act. Hence, the same is hereby cancelled.*

**(v) In the result, the appeal is allowed."**

5. Against the impugned order of the Id. CIT(A), the revenue is in appeal before us.

6. Rival contentions have been hard and record perused. In this case penalty has been imposed with respect to the addition made by the AO by invoking deeming provisions of section 50C of the Act, wherein AO has substituted actual sale consideration with value taken by sub-registrar for the purpose of valuation of property so sold. The Id. CIT(A) has recorded a categorical finding to the effect that the AO has not established that such differential consideration actually received or that assessee has concealed the income or furnished inaccurate particulars of income. The issue under consideration is covered by the decisions of various Hon'ble High Courts including Bombay High Court in the case of **Fortune Hotels & Estates Pvt. Ltd**, wherein Hon'ble Court held that penalty cannot be imposed with reference to deemed income u/s. 50C of the Act. The Id. CIT(A) has deleted the penalty so imposed with respect to the addition(s) made u/s. 50C by relying on various judicial pronouncements including Co-ordinate Bench of Jaipur (ITAT, Jaipur). Nothing was brought on record by the Id.DR so as to persuade us to deviate from the findings so recorded by the Id. CIT(A). Moreover, no contrary decision was brought to our notice for holding that penalty is imposable even with respect to the addition made u/s. 50C of the Act. Accordingly, we do not find any infirmity in the impugned order of the Id. CIT(A) for deleting the penalty imposed u/s. 271(1) (c) of the Act.

7. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 10<sup>th</sup> June, 2019.

Sd/-  
(विजय पाल राव)  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

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

जयपुर / Jaipur

दिनांक / Dated:- 10<sup>th</sup> June, 2019

\*PP/SPS

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

1. अपीलार्थी / The Appellant/Revenue-The ACIT, Cir-2, Jaipur.
2. प्रत्यर्थी / The Respondent- M/s. Golcha Minerals Pvt. Ltd, Jaipur.
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. 103/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar