

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'SMC'अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 326/Ahd/2017

(निर्धारण वर्ष / Assessment Year: 2010-11)

Smt Niharika Maheshkumar Trivedi Prop: Harikrushna Technopride Engg, C-2/A-8, GIDC Estate, Phase-1, Opp. SBI, Vatva, Ahmedabad-382445	बनाम/ Vs.	ITO Ward-3(2)(8) Ahmedabad
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAW PT4 540 L		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	None
प्रत्यर्थीकीओरसे / Respondent by:	Shri Keyur Patel, Sr. DR

सुनवाईकीतारीख/Date of Hearing	14/06/2019
घोषणाकीतारीख /Date of Pronouncement	28/06/2019

आदेश/ORDER

PER AMARJIT SINGH - AM:

The appeal filed by the assessee for A.Y. 2011-11, arise from order of the CIT(A)-3, Ahmedabad dated 15.12.2016, in proceedings penalty under section 271(1)(c) of the Income Tax Act, 1961; in short "the Act".

2. The solitary ground of appeal of the assessee is against the order of Ld. CIT(A) in confirming penalty u/s. 271(1)(c) of the Act to the amount of Rs. 3,89,665/- levied by the AO. The fact in brief is that assessee has filed return of income declaring total income of Rs. 2,36,790/- on 30.09.2010. The return of income filed by the assessee

was subject to scrutiny assessment and order u/s. 143(3) of the Act was passed on 28.12.2012.

During the course of assessment the AO noticed that assessee has sold an industrial plot of land along with factory shed for Rs. 42,00,000/- during the year under consideration. The W.D.V. of the factory shed was adjusted with the sale consideration and cost of Rs. 33,10,000/- of another plot of land and factory shed acquired during the year under consideration. The cost of the plot sold was declared at Rs. 16,00,000/-. After verification of the aforesaid fact the AO has observed that assessee has not disclosed any capital gain on sale of industrial plot which was a capital asset. Therefore, the AO has bifurcated the sale consideration of Rs. 42,00,000/- between the value of land and the factory shed. After taking the value of factory shed for F.Y. 2006-07 the W.D.V. of the same for F.Y. 2009-10 was determined at Rs. 5,83,200/-, therefore, sale consideration of Rs. 5,83,200/- was attributed towards the factory shed and the remaining sale consideration of Rs. 36,16,800/- was attributed towards sale of land. After taking cost of land of Rs. 8,00,000/- as on 21.12.2006 with indexation the long term capital gain on sale of land was determined at Rs. 26,42,620/-. The aforesaid long term capital gain from the sale of land of Rs. 26,42,620/- was added to the total income of the assessee and penalty proceeding u/s. 271(1)(c) of the Act were initiated for concealing particular of income.

3. The assessee has filed appeal before the Ld. CIT(A) who has restricted the addition of long term capital gain to the amount of Rs. 19,48,362/- on the ground that the assessee has not claimed any depreciation on the factory shed, therefore, the cost for the purpose of calculating the capital gain shall be the cost of acquisition for which the assessee has purchased the asset in the year 2006. Thereafter, the AO has issued show-cause notice dated 02.01.2015 to the assessee to explain as to why the penalty u/s. 271(1)(c) of the Act should not be levied for not disclosing aforesaid long term capital gains. The assessee has replied that there was no concealment of income, therefore, penalty should not be levied u/s. 271(1)(c) of the Act. The AO was of the view that long term capital gain on the sale of factory land was ascertained during the assessment proceeding, therefore, it can be safely presumed that assessee has indeed

concealed the particulars of her income for the year under consideration. Accordingly, he has levied minimum penalty of Rs. 3,89,665/- on concealment of particulars of income in respect of long term capital gain on sale of factory land.

4. Aggrieved assessee has filed appeal before the Ld. CIT(A). Ld. CIT(A) has dismissed the appeal of the assessee.

5. During the course of appellate proceeding before us we have heard the Ld. DR and perused the material on record. During the course of penalty proceeding the assessee stated that it is not justified to bifurcate the cost of the factory shed and the cost of land in two parties as the sale consideration pertained to the composite unit including both factory shed and land and no separate or individual price was determined for factory shed and land. The AO has not agreed with the submission of the assessee and he was of the view that sale consideration attributable to the plot of land should be subject to capital gain tax. However, the AO was of the view that the factory shed depreciate @ 10% per year, therefore, the sale consideration attributable to the value of factory shed was determined at Rs. 5,83,200/- out of the total sale consideration of Rs. 42,00,000/- whereas the balance of Rs. 36,16,800/- was determined as attributable to the value of land and accordingly the long term capital gain on sale of land was determined at Rs. 26,42,620/-. It is demonstrated from the above facts that assessee has purchased composite unit as per the purchase deed of the factory shed bearing plot No. 51/03, Phase-1 at GIDC, Narol, Ahmedabad and the conveyance made by the vendor was in respect of lease hold right etc. The assessee had purchased the land and factory building for Rs. 16,00,000/- in the year 2006. The AO has considered the cost in the ratio of 50:50. The AO has held that the building was a depreciable asset and accordingly the depreciate value of the building was deducted from the sale consideration of Rs. 42,00,000/- and balance consideration was considered toward land sale and capital gain was worked out after allowing indexation. It is clear that assessee has sold the factory shed as a composite and single unit and no separate sale consideration was received toward land and factory shed.

In the light of the above facts and circumstances we are of the view that assessee has disclosed all the material fact and the assessee has not claimed any depreciation on the land which was included in the composite unit of the factory shed, therefore, the decision of Ld. CIT(A) in sustaining the penalty levied by the AO is not justified. Accordingly, the penalty levied in the assessee's case is deleted.

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

This Order pronounced in Open Court on	28/06/2019
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Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad: Dated 28/06/2019

TANMAY

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आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।