

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” Bench, Mumbai**

**Before Shri Shamim Yahya, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA No.770/Mum/2018  
(Assessment Year: 2013-14)**

Rasai Properties Pvt. Ltd.  
3, Sarovar Building,  
Vasant Complex,  
Mahavir Nagar, Link Road,  
Kandivali West,  
Mumbai – 400067

Dy. Commissioner of  
Income Tax-13(3)(1),  
219, Aayakar Bhavan,  
Vs. M.K. Road,  
Mumbai – 400 020

PAN – AACCR7432E

**(Appellant)**

**(Respondent)**

Appellant by: Shri Nilesh Kumar Bavaliya, A.R  
Respondent by: Shri D.G. Pansari, Sr. D.R

Date of Hearing: 24.06.2019  
Date of Pronouncement: 28.06.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-21, Mumbai, dated 30.05.2016, which in turn arises from the order passed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short ‘Act’), dated 30.05.2016. The assessee has assailed the order of the CIT(A) by raising before us the following grounds of appeal:

- “1. We are not agreeing with the Order U/s. 271(1)(c) of the Income Tax Act, 1961 passed by Commissioner of Income Tax (Appeals)-21, Mumbai.
2. During the assessment proceeding same mistake was notice by the assessee company and immediately it was brought to the notice of assessing officer, even before asking by the assessing officer. Which shows that this is not concealment but a bonafide mistake which was not only suo moto offered by the assessee company but also the assessee company has paid the due taxes.

3. The previous record of assessee company also shows that assessee company has always been a co-operative & honest tax payer.
4. While leaving the penalty assessing officer has written that same mistake was not rectified by filing the revised return. In this regards fact is that by the time assessee notice the mistake time for the revising the return had been expired. Since the case was in scrutiny, same was offered for tax before assessing officer could find the mistake.
5. All the additions made during the assessment order does not amount to concealment. Reliance is place on the order of honorable supreme court in the case of Reliance Petroproducts Pvt. Ltd.”

2. Briefly stated, the assessee company had e-filed its return of income for A.Y 2013-14 on 27.09.2013, declaring its total income at Rs.80,19,650/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings it was inter alia observed by the A.O, that a deduction of Rs.6,70,000/- was discernible from the chart of ‘block of assets’ comprising of ‘tangible fixed assets’, which formed part of the ‘balance sheet’ of the assessee company for the year under consideration. On being queried as regards the nature of the aforesaid deduction from the block of tangible assets, it was submitted by the assessee that the same pertained to certain properties which were sold during the year under consideration. The A.O called upon the assessee to explain as to why it had not offered the income from the sale of the aforementioned properties under the head income from ‘Long Term Capital Gain’ (for short ‘LTCG’). In reply, the assessee filed the working of the LTCG on sale of the three premises viz. Shop No. 10, Shop No.11, and Shop No.12, as under:

Details of the shop	Sale price (Amount in Rs.)	Cost of Indexation (Amount in Rs.)	Difference treated as Long Term Capital Gain (Amount in Rs.)
Shop No. 10	1650000	1069824	580176
Shop No. 11	2750000	1838325	911675
Shop No. 12	2300000	1846675	453325

Total	6700000	4754824	1945176
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Accordingly, the assessee offered the LTCG of Rs.19,45,176/- for tax. Apart there from, the A.O also made a disallowance of Rs.93,453/- towards excess claim of municipal taxes by the assessee. The A.O while culminating the assessment initiated penalty proceedings under Sec. 271(1)(c) for furnishing of inaccurate particulars of income and concealment of income in context of the aforesaid addition/disallowance made in the hands of the assessee.

4. Subsequently, the A.O being of the view that the assessee had filed inaccurate particulars of its income within the meaning of Sec.271(1)(c) r.w. Explanation 1, therein imposed a penalty of Rs.6,29,936/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A). As regards the penalty that was imposed by the A.O under Sec 271(1)(c) in context of the excess claim of municipal taxes of Rs.93,453/- by the assessee, the CIT(A) accepted the contention of the assessee and deleted the same. However, not finding favour with the contentions advanced by the assessee as regards the penalty that was imposed in context of not offering of LTCG of Rs.19,45,176/- that was earned from the sale of the aforesaid three shops, the CIT(A) confirmed the penalty imposed by the A.O. under Sec. 271(1)(c).

6. The assessee being aggrieved with the order of the CIT(A), has carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee submitted, that the LTCG on sale of three shops had inadvertently on account of a bonafide mistake on the part of the assessee remained omitted to be shown in the return of income. The ld. A.R in order to impress upon

us that there was no malafide intention on the part of the assessee submitted, that the fact that the assessee had never intended to withhold sale of the property under consideration could safely be gathered from as perusal of the chart of the tangible fixed assets that formed part of its balance sheet for the year under consideration, wherein the a deduction of Rs.67,00,000/- was disclosed by the assessee. It was further submitted by the ld. A.R, that the assessee on learning of his aforesaid mistake had immediately worked out the LTCG on the sale of the aforementioned properties and, had offered the same for tax in the course of the assessment proceedings. In sum and substance, it was the claim of the ld. A.R that the mistake on the part of the assessee in not offering the LTCG on the sale of the aforesaid shops was totally backed by a bonafide mistake.

7. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the ld. D.R, that if the case of the assessee would not have been selected for scrutiny assessment, then the said amount of LTCG would not have been offered for tax by the assessee. It was submitted by the ld. D.R, that the lower authorities had rightly imposed/upheld the penalty levied on the assessee under Sec. 271(1)(c) of the Act.

8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, the assessee had failed to offer the LTCG on sale of three shops viz. Shop No. 10, Shop No.11 and Shop No. 12 for tax in its return of income for the year under consideration. However, at the same time, we find that the 'chart' of the 'block of assets' of tangible fixed assets, forming part of the balance sheet of the assessee as 'Note No. 6' to the financial statements for the year ended

31.03.2013, clearly reveals that the assessee had duly disclosed the deduction of Rs.67,00,000/- from the block of fixed assets, as under :

**“6. TANGIBLE FIXED ASSETS**

GROSS BLOCK	AGRICULTURAL LAND AT	AIR CONDITIONER	BUILDING PREMISES (B)	COMPUTER	FURNITURE AND FIXTURE	MOTOR CAR	MOTOR CAR BMW XS	TELEVISION
As on 31.03.2012	57,010.00	115,625.00	46,771,545.00	128,870.00	542,132.00	5,190,171.00	0.00	76,000.00
Additions	4,155,450.00	0.00	0.00	0.00	0.00	0.00	8,041,746.00	0.00
Deductions	0.00	0.00	6,700,000.00	0.00	0.00	0.00	0.00	0.00
As on 31.03.2013	4,230,460.00	115,625.00	40,071,545.00	128,870.00	542,132.00	5,190,171.00	8,041,746.00	76,000.00

A careful perusal of the aforesaid ‘chart’ filed by the assessee, reveals beyond any doubt, that the deduction pertaining to ‘building premises’ of Rs.67,00,000/- was duly disclosed by the assessee in the aforesaid ‘block of assets’. Apart there from, we find that the assessee in the course of the assessment proceedings on learning about its aforesaid inadvertent omission in not offering the LTCG on the sale of the aforesaid shops had worked out its income under the said head and offered the same for tax. In our considered view, now when the assessee had disclosed the deduction of Rs.67,00,000/- pertaining to sale of the aforesaid three shops from the ‘block of assets’ in its balance sheet for the year under consideration, therefore, there is substantial force in its claim that the failure to offer LTCG on the sale of the said shops had inadvertently remained omitted to be shown in the return of income for the year under consideration. We are of the considered view that imposition of penalty under Sec. 271(1)(c) would be unwarranted in a case where the assessee had committed an inadvertent and a bonafide error, and had not intended or attempted to either conceal its income or furnish inaccurate particulars. Our aforesaid view is fortified by the judgment of the **Hon’ble Supreme Court** in the case of **Price Water House Cooper Pvt. Ltd. Vs. CIT (2012) 348 ITR 306**. In the said case, the Hon’ble Supreme Court

taking cognizance of the fact that the assessee had failed to add the provision for gratuity to its total income, had therein observed that the assessee had made a bonafide error in computing its income while filing its return of income. In the backdrop of the aforesaid facts, it was observed by the Hon'ble Apex Court that what had happened was that through a bonafide and an inadvertent error, the assessee while submitting its return of income, had failed to add the provision for gratuity to its total income. Accordingly, it was observed, that the aforesaid failure on the part of the assessee could only be described as a human error which all are prone to make. Further, it was observed that though the assessee should have been careful, but the absence of due care would not mean that the assessee is guilty of either furnishing inaccurate particulars or had attempted to conceal its income. We find that the facts of the case before us clearly falls within the four corners of the aforesaid view taken by the Hon'ble Apex Court. As is discernible from the records, the fact that there was a sale/transfer of the properties could safely be gathered from the chart of the 'block of assets' of the tangible fixed assets that formed part of the 'balance sheet' of the assessee for the year under consideration. In our considered view, the assessee had inadvertently omitted to offer the LTCG on the sale of the property for tax, while filing its return of income for the year under consideration. Admittedly, there has been an omission on the part of the assessee to disclose the LTCG on sale of the shops in its return of income for the year under consideration. However, at the same time, we cannot remain oblivious of the bonafides of the assessee, which can safely be gathered from the aforesaid facts and discard its explanation for no justifiable reason. Accordingly, in the totality of the facts of the case, we are of a strong conviction that imposition of penalty under Sec. 271(1)(c) would be unwarranted on account of the aforesaid inadvertent and bonafide

error on the part of the assessee. We thus not being able to persuade ourselves to accept the view taken by the lower authorities set aside the order of the CIT(A) and delete the penalty imposed by the A.O under Sec. 271(1)(c).

9. The appeal of the assessee is allowed.

Order pronounced in the open court on 28.06.2019

Sd/-  
(Shamim Yahya)  
ACCOUNTANT MEMBER  
मुंबई Mumbai; दिनांक 28.06.2019  
Ps. Rohit

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

**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)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**  
**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT,**  
**Mumbai**

