

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'B' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1357/JP/2018
निर्धारण वर्ष/Assessment Year :2011-12

ITO, Ward-3(5), Jaipur	बनाम Vs.	M/s Maa Karni Kripa Housing Projects Pvt. Ltd., F-177, Amrapali Marg, Vaishali Nagar, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAECM4921H		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

राजस्व की ओर से/ Revenue by : Karni Dan (JCIT)
निर्धारिती की ओर से/ Assessee by : Prerna Sharma (CA)

सुनवाई की तारीख/ Date of Hearing : 07/08/2019
उदघोषणा की तारीख/Date of Pronouncement: 19/08/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the Revenue against the order of Id. CIT(A)-1, Jaipur dated 18.09.2018 against the deletion of penalty amounting to Rs. 35,89,920/- for assessment year 2011-12 u/s 271(1)(c) of the Act

2. At the outset, the Id. AR submitted that in the quantum proceedings (*in ITA No. 1020/JP/2015 dated 27.07.2018*), the matter has been decided by the Co-ordinate Bench in assessee's favour. Further, Misc. Application filed by the Revenue has also been dismissed vide order of the Co-ordinate Bench in MA No. 18/JP/2019 dated 10/07/2019. It was accordingly submitted that where the quantum additions have been deleted by the Co-ordinate Bench, there is no basis for levy of penalty u/s 271(1)(c) of the Act. She accordingly submitted that there is no infirmity in the findings of the Id. CIT(A) wherein he has

deleted the levy of penalty following the deletion of additions in the quantum proceedings.

3. The Id. DR is heard who has relied on the order of the Assessing Officer. At the same time, he fairly submitted that the matter has been decided in the quantum proceedings in favour of the assessee and even the misc. application filed by the Revenue has been dismissed.

4. We have heard the rival contentions and perused the material available on record. The Co-ordinate Bench (*in ITA No. 1020/JP/2015 dated 27.07.2018*) has deleted the addition made by the Assessing Officer in the quantum proceedings and the relevant findings are contained at para 5 of its order which reads as under:-

"5. We have heard both the sides on this issue and perused the material available on the record. The only issue involved in the appeal is that the Id. CIT(A) has confirmed the action of the Assessing Officer while considering the gain earned on sale of agricultural land as business income. Following facts are undisputed. The assessee purchased agricultural land situated at village Dukiya and village Alauda. This land remains agriculture land and was not converted to any other use. This land was declared as stock in trade by the assessee company in earlier year. The assessee company passed a resolution placed at page 16 of the paper book on 01/4/2010 that the agricultural land purchased by the company during A.Y. 2005-06 and 2006-07 in villages Dukiya and Alauda, tehsil- Dantaramgarh, district- Sikar with the intention of selling them or converting the same into residential and constructing residential apartments thereon shall henceforth be treated as capital asset of the company in view of decision to use such lands for agricultural farming for

the company's own purpose as initial intention of holding above lands as stock in trade is no more viable since it would take at least 10 years for the agricultural land to be inhabitable. Thus, the assessee has converted this agricultural land from the stock in trade to investment. The ITAT Mumbai "E" Bench while deciding ITA No. 4208/Mum/2007 in the case of ACIT-1(3), Mumbai Vs M/s Superior Financial Consultancy Services Pvt. Ltd. on relying on the decision of Hon'ble Supreme Court in the case of Sir Kikabhai Premchand Vs CIT(Central), Bombay (supra) has held as under:

"6. We have heard the parties and perused the material on record. It is relevant to state that the Id. CIT(A), for the purpose of deciding the case has elaborately discussed three main issues, namely (i) whether the assessee can legally convert its stock-in-trade into investments, (ii) if yes, whether the conversion is motivated by tax avoidance and (iii) if not, whether the assessee can claim to be an investor in some shares while doing speculation in other shares.

6.1 As regards the legality of conversion of stock-in-trade into investments, the Ld.CIT has correctly held that there is no specific bar for the said conversion and vice versa in view of the decision of the Hon'ble Supreme Court in the case of Sir Kikabhai Premchand (24 ITR 506) (SC) wherein it has been held that such conversion is not something not known to the commercial world and there is no legal bar on the same.

Thus, it has been clearly held that there is no specific bar for the conversion of stock in trade into investment and vice versa in view of the decision of the Hon'ble Supreme Court in the case of Sir Kikabhai Premchand (supra). The act of the assessee converting the stock in trade into investment is not against any law at the relevant time. The fact regarding agricultural land and situated beyond the prescribed limit of Municipal Corporation is also undisputed. The agricultural land which was

sold, was not a capital asset as per I.T. Act. Once the asset transferred is not a capital asset then capital gain is not taxable. This view is also get strength from the Memorandum of Financial Bill, 2018. Relevant para of Memorandum of Financial Bill, 2018 is reproduced as under:

Rationalisation of provision relating to conversion of stock-in-trade into Capital Asset

Section 45 of the Act, inter alia, provides that capital gains arising from a conversion of capital asset into stock-in-trade shall be chargeable to tax. However, in cases where the stock in trade is converted into, or treated as, capital asset, the existing law does not provide for its taxability.

In order to provide symmetrical treatment and discourage the practice of deferring the tax payment by converting the inventory into capital asset, it is proposed to amend the provisions of —

- (i) Section 28 so as to provide that any profit or gains arising from conversion of inventory into capital asset or its treatment as capital asset shall be charged to tax as business income. It is also proposed to provide that the fair market value of the inventory on the date of conversion or treatment determined in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of such conversion or treatment;*
- (ii) clause (24) of section 2 so as to include such fair market value in the definition of income;*
- (iii) section 49 so as to provide that for the purposes of computation of capital gains arising on transfer of such capital assets, the fair market value on the date of conversion shall be the cost of acquisition;*
- (iv) clause (42A) of section 2 so as to provide that the period of holding of such capital asset shall be reckoned from the date of conversion or treatment.*

These amendments will take effect, from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years. [Clause 3, 9 & 18]

In the Memorandum of Financial Bill, 2018, it has been categorically stated that where the stock in trade is converted into capital asset (investment, the existing law does not provide for its taxability and in order to provide symmetrical treatment and discourage differing the tax payment, the amendments have been carried out. In view of these legal and factual matrix, we allow the appeal of the assessee."

5. Further, it is noted that the Revenue has moved an misc. application seeking recalling of the said order and the said Misc. Application has since been dismissed by the Co-ordinate Bench (*in MA No. 18/JP/2019 dated 10/07/2019*) and the relevant findings are contained as under:-

"Thus the Tribunal has duly considered the finding of the Id. CIT (A) as well as the AO while treating the income on sale of agricultural land as business income. The impugned order has been passed by the Tribunal on merit after analyzing the facts as well as following the decision of the Coordinate Bench of this Tribunal. Further, the amendment brought to section 28 of the IT Act by the Finance Bill 2018 was considered by the Tribunal and, therefore, prior to the said amendment there was no provision in the IT Act to tax the conversion of stock-in-trade into capital asset. Once the Tribunal has decided the issue by considering all the relevant facts, then even if the decision taken by the Tribunal may be an error of judgment, the same cannot be said to be an apparent mistake on record which can be rectified under section 254(2) of the Act. The jurisdiction of the Tribunal under section 254(2) is very limited and circumscribed to rectify the apparent mistake which does not require any long drawn reasoning. The revenue in the present Miscellaneous

Application is seeking to re-appreciate the facts and review the reasoning on the matter. Accordingly, we hold that the Miscellaneous Application does not reveal any apparent mistake in the impugned order."

6. We therefore, do not see any infirmity in the order of Id. CIT(A) where he has deleted the penalty so levied on the assessee where the very basis for levy of penalty has been deleted in the quantum proceedings,. Therefore, without going into the merits of the levy of penalty, given that the very basis for levy of penalty does not exist, the penalty u/s 271(1)(c) has rightly been deleted by the Id CIT(A) and the same is hereby confirmed.

In the result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 19/08/2019.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 19/08/2019

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- ITO, Ward-3(5), Jaipur
2. प्रत्यर्थी / The Respondent- M/s Maa Karni Kripa Housing Projects Pvt. Ltd., Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1357/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

