

-आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH ‘B’

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

**ITA No.322/Ahd/2018**  
निर्धारण वर्ष/ Asstt.Year: **2011-12**

Gopal D. Patel C/o. Ketan H. Shah, Advocate 512, Time Square-1 Opp: Ram Baug bungalow Thaltej Shilaj Road Thaltej, Ahmedabad PAN : APZPP 0855 N	Vs.	Dy.CIT, Cent.Cir.1(1) Ahmedabad.
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<b>(Applicant)</b>		<b>(Responent)</b>
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Revenue by :	Shri Aman K. Shah
Assessee by :	Shri N.K. Goel, Sr.DR

सुनवाई की तारीख/Date of Hearing : 03/10/2019

घोषणा की तारीख /Date of Pronouncement: /10/2019

**आदेश/O R D E R**

**PER RAJPAL YADAV, JUDICIAL MEMBER:**

Assessee is in appeal before the Tribunal against order of ld.CIT(A)-11, Ahmedabad dated 5.12.2017 passed for the assessment year 2011-12.

2. Sole grievance of the assessee is that the ld.CIT(A) has erred in confirming penalty of Rs.3,54,060/- which was imposed by the AO under Section 271(1)(c) of the Income Tax Act, 1961.

3. Brief facts of the case are that the assessee has filed his return of income 28.3.2012 declaring total income at Rs.28,240/-. The case of the

assessee was selected for scrutiny assessment and notice under section 143(2) of the Act was issued and served upon the assessee. Through AIR wing, an information came to the AO that the assessee was having 1/3<sup>rd</sup> share in a property bearing block No.253/B/1 situated at Revenue state of Daskroi, Mouje-Ambli, District Ahmedabad. This property was sold for a sum of Rs.51,33,000/-. According to the AO, share of the assessee was Rs.17,11,000/-. After taking indexed cost, the ld.AO has worked out long term capital gain at Rs.13,76,289- and made addition of the above amount. He initiated penalty proceedings. After hearing the assessee he imposed penalty of Rs.3,54,060/-. Appeal to the CIT(A) did not bring any relief to the assessee.

4. The ld.counsel for the assessee contended that the stand of the assessee from the beginning was that his property was purchased his father. Name of the assessee and his brother were included only for legal heir purposes, and they have signed sale deed as conforming party. They were not actual owner. Father has offered capital gain on sale consideration of Rs.51,33,000/-. He shown us computation of income filed by the father, and how it has been accounted for. Such details are available on pager no.20-21 of the paper book. On the strength of the above documents, he prayed that the penalty be deleted. On the other hand, the ld.DR relied upon the orders of the Revenue authorities.

5. We have heard rival submissions and gone through the record. Section 271(1)(c) of the Income Tax Act, 1961 has direct bearing on the controversy. Therefore, it is pertinent to take note of the section.

*"271. Failure to furnish returns, comply with notices, concealment of income, etc.*

*(1) The Assessing Officer or the Commissioner (Appeals) or the CIT in the course of any proceedings under this Act, is satisfied that any person*

*(a) and (b)\*\**

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*(c) has concealed the particulars of his income or furnished inaccurate particulars of such income.*

*He may direct that such person shall pay by way of penalty.*

*(i) and (Income-tax Officer,\*\* \*\**

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*(iii) in the cases referred to in Clause (c) or Clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefit the furnishing of inaccurate particulars of such income or fringe benefits:*

*Explanation 1- Where in respect of any facts material to the computation of the total income of any person under this Act,*

*(A) Such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the CIT to be false, or*

*(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him, then, the amount added or disallowed in computing the total income or such person as a result thereof shall, for the purposes of Clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed."*

6. A bare perusal of this section would reveal that for visiting any assessee with the penalty, the Assessing Officer or the Learned CIT(Appeals) during the course of any proceedings before them should be satisfied, that the assessee has; (i) concealed his income or furnished inaccurate particulars of income. As far as the quantification of the penalty is concerned, the penalty imposed under this section can range in between 100% to 300% of the tax sought to be evaded by the assessee, as a result of such concealment of income or furnishing

inaccurate particulars. The other most important features of this section is deeming provisions regarding concealment of income. The section not only covered the situation in which the assessee has concealed the income or furnished inaccurate particulars, in certain situation, even without there being anything to indicate so, statutory deeming fiction for concealment of income comes into play. This deeming fiction, by way of *Explanation I* to section 271(1)(c) postulates two situations; (a) first whether in respect of any facts material to the computation of the total income under the provisions of the Act, the assessee fails to offer an explanation or the explanation offered by the assessee is found to be false by the Assessing Officer or Learned CIT(Appeal); and, (b) where in respect of any fact, material to the computation of total income under the provisions of the Act, the assessee is not able to substantiate the explanation and the assessee fails, to prove that such explanation is bona fide and that the assessee had disclosed all the facts relating to the same and material to the computation of the total income. Under first situation, the deeming fiction would come to play if the assessee failed to give any explanation with respect to any fact material to the computation of total income or by action of the Assessing Officer or the Learned CIT(Appeals) by giving a categorical finding to the effect that explanation given by the assessee is false. In the second situation, the deeming fiction would come to play by the failure of the assessee to substantiate his explanation in respect of any fact material to the computation of total income and in addition to this the assessee is not able to prove that such explanation was given *bona fide* and all the facts

relating to the same and material to the computation of the total income have been disclosed by the assessee. These two situations provided in *Explanation 1* appended to section 271(1)(c) makes it clear that that when this deeming fiction comes into play in the above two situations then the related addition or disallowance in computing the total income of the assessee for the purpose of section 271(1)(c) would be deemed to be representing the income in respect of which inaccurate particulars have been furnished.

7. In the light of the above, if we examine the explanation of the assessee, then it would reveal that stand of the assessee during the assessment proceedings was that this land was purchased by the father; names of the assessee and his brother were included for future purpose so that no dispute with regard to inheritance would arise in the family. Father has accounted for long term capital gain of Rs.41,05,518/- and he has claimed deduction under section 54F at Rs.38,87,965/- in the return. Thus, the assessee has reasonable explanation in his mind to believe that no capital gain tax is leviable in his hand. Therefore, he does not deserve to be visited with penalty. We allow the appeal of the assessee, and delete the penalty.

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

**Order pronounced in the Court on 15<sup>th</sup> October, 2019 at Ahmedabad.**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**

Ahmedabad; Dated 15/10/2019