

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.7588/Del./2018  
Assessment Year 2014-2015

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| Shri Anil Gupta,<br>27, Anand Lok,<br>New Delhi – 110049<br>PAN AAHPG3269N | vs. | The ACIT,<br>Circle – 53 (1), Civic<br>Centre, New Delhi.<br>PIN – 110 002. |
| (Appellant)  |     | (Respondent)  |

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| For Assessee : | Shri B.P. Anthwal, Advocate.           |
| For Revenue :  | Shri Pradeep Singh Gautam,<br>Sr. D.R. |

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|-------------------------|------------|
| Date of Hearing :       | 11.11.2019 |
| Date of Pronouncement : | 11.11.2019 |

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by assessee has been directed against the Order of the Ld. CIT(A)-18, New Delhi, Dated 15.10.2018, for the A.Y. 2014-2015, challenging the levy of penalty under section 271(1) (c) of the I.T. Act, 1961.

2. I have heard the Learned Representative of both the parties and perused the material on record.

3. Briefly the facts of the case are that assessee is an individual, having income from house property, business/ profession, capital gain and other sources. The assessee filed return of income declaring an income of Rs.26,21,800/-. From the perusal of the Income tax return and computation of income as submitted by the assessee, it was found that the assessee has booked long term capital loss of Rs.13,96,492/- on the sale of his property at khasra no. 505, Estate of Village Shahoorpur, Tehsil Hauz Khas. A.O. noted the details of the same. The A.O. noted that assessee has voluntarily submitted the sales deed and valuation report in respect of the same property. After the perusal of the sale deed, it was seen that the total sale consideration of the property was Rs.55 lakhs. The assessee is one of the shareholder in the said property, and accordingly he has booked his loss in percentage of 8.33%. The A.O. also noted that there is a difference in the share whether it is 8.33% on the sales side and 33.3% in the purchase side. The A.O. also noted that if valuation report is looked into as submitted by assessee, it was seen that Dr.

Anil Gupta (Assessee) along with Mr. Vijay Kumar Gupta and Mr. Sanjeev Gupta is entitled for the combined 1/15<sup>th</sup> (6.66%) of share in the property. Similarly, as per the sale deed submitted by the assessee, it can be seen that assessee is entitled for the 1/15<sup>th</sup> (6.66%) of the share in property. However, the assessee has not received the sale consideration in such ratios. The assessee has received the sale consideration in the ratio of 8.33%. The assessee admitted and explained before A.O. that this difference is because of some clerical error. The A.O. accordingly computed long term capital loss of Rs.5503/- and assessed the income on returned income at Rs.26,21,800/-. The A.O. in view of the above levied the penalty under section 271(1)(c) of the I.T. Act, 1961. The Ld. CIT(A) dismissed the appeal of assessee.

4. Learned Counsel for the Assessee submitted that assessee furnished all the relevant information at the time of filing of the return as well as filed details before A.O. No income has been concealed because returned income is accepted. All the information were provided to the A.O.

voluntarily, therefore, it is not a fit case for levy of the penalty. He has relied upon Orders of the Tribunal in which on bonafide mistake penalty have been cancelled. The decisions are (1) Order of ITAT, Agra Bench in the case of Shri Sarv Prakash Kapoor, Agra vs. DCIT-4(1), Agra in ITA.No.95/Agr/2012, Dated 07.09.2012; (2) Order of ITAT, Delhi Bench in the case of ALP Overseas Pvt. Ltd., New Delhi vs., DCIT, Circle-1(1), New Delhi in ITA.No.6140/Del/2015, Dated 30.07.2018.

5. The Ld. D.R. on the other hand relied upon the Orders of the authorities below.

6. I have considered the rival submissions. In this case assessee declared long term capital loss in the return of income and provided all relevant information to the A.O. Ultimately it was found that share of the assessee in the impugned property was lesser. But, the assessee claimed higher ratio in the sale consideration. These are the relevant facts and information have been supplied to the A.O. It appears to be a bonafide clerical mistake on the part of the

assessee which assessee has explained before A.O. as well. Ultimately, in this case, the return of income have been accepted by the A.O, therefore, there is no loss to the Revenue. Only long term capital loss have been reduced because of the lesser share of the assessee in the impugned property. I am of the view that it is not a case of furnishing of inaccurate particulars of income or concealment of particulars of income. The decisions relied upon by the Learned Counsel for the Assessee apply to the facts of the case. Therefore, I am of the view that no penalty is leviable. I, accordingly, set aside the Orders of the authorities below and cancel the penalty. Appeal of the Assessee is allowed.

7. In the result, appeal of the Assessee allowed.

Order pronounced in the open Court.

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 11<sup>th</sup> November, 2019

VBP/-

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| 1. | The appellant         |
| 2. | The respondent        |
| 3. | CIT(A) concerned      |
| 4. | CIT concerned         |
| 5. | D.R. ITAT "SMC" Bench |
| 6. | Guard File            |

// BY Order //

Asst. Registrar : ITAT Delhi Benches :  
Delhi.