

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI N.V VASUDEVAN, VICE PRESIDNET AND
SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.14/Bang/2018

Assessment year : 2013-14

The ACIT. Commissioner of Income-tax, Circle-3(1), Hubballi-580 025.	Vs.	Shri Sadashivayya S Soppimath, Rose S-1, Akruiti Gardens, Bhavani Nagar, Hubballi-24. PAN – AGHPS 4167 K
APPELLANT		RESPONDENT

Assessee by	:	Shri Priyadarshi Misra, JCIT (DR)
Revenue by	:	Shri S.V Ravishankar, Advocate

Date of hearing	:	18.02.2020
Date of Pronouncement	:	28.02.2020

ORDER

Per B.R Baskaran, Accountant Member

The appeal filed by the Revenue is directed against the order dated 25/10/2017 passed by Id CIT(A), Huballi and it relates to asst. year 2013-14.

2. The Revenue is aggrieved by the decision of Id CIT(A) in deleting the penalty of Rs.71,55,205/- levied by the AO u/s 271(1)(c) of the Act.

3. We heard the parties and perused the record.

4. The facts that lead to levy of penalty u/s 271(c) are stated in brief:

The assessee is an individual and is a Doctor. He filed his return of income declaring a total income of Rs.23.74 lakhs. During the course of asst. proceedings the assessee submitted to the AO that he has earned long term capital gains on sale of a plot. The total consideration received was stated to be Rs.3.50 crores. It was submitted that long term capital gain was omitted to be included in the return of income filed by him. Accordingly the assessee furnished a statement of working of capital gain and declared long term capital gain of Rs.3.13 crore. The assessee also claimed exemption u/s 54F of the Act to the tune of Rs.33.36 lakhs and accordingly the taxable capital gain was declared at Rs.2.77 crores. The AO noticed that the assessee has claimed "cost of improvement incurred on land" as deduction against the sale consideration. The AO disallowed the claim of improvement and accordingly computed long term capital gain at Rs.3.32 crore. He also restricted the exemption u/s 54F of the Act to Rs.18.42 lakhs. Accordingly the AO computed the taxable capital gain at Rs.3.13 crores as against Rs.2.77 core declared by the assessee.

5. The assessee had also claimed deduction of interest against house property income to the tune of Rs.1.50 lakhs. Since the assessee did not furnish any documentary proof to support a claim of deduction of interest expenditure the AO disallowed the same.

6. It was stated that the assessee accepted the asst. order and did not prefer appeal. The AO initiated penalty proceedings u/s 271(1)(c) of the Act and levied penalty of Rs.71,55,205/- on the amount of long term capital gain as well as interest disallowance made by him. The ld CIT(A) deleted the penalty and hence the Revenue has filed this appeal before us.

7. We heard the parties and perused the record. We noticed that the assessee has voluntarily declared the long term capital gain before the AO during the course of asst. proceedings even though the same was not included in the return of income. The ld AR submitted that the assessee is a Doctor and his books of account are maintained by an Accountant. The said Accountant has inadvertently included the sale consideration received on sale of land in the list of sundry creditors instead of crediting the same to the capital account of the assessee. Hence while computing total income at the time of filing return of income, the same has escaped attention. However, during the course of asst. proceedings, the said omission was brought to the notice of the AO before it is being detected by him. Accordingly the ld AR submitted that the ld CIT(A) has deleted the penalty on this amount by duly appreciating the above facts.

8. With regard to the disallowance of interest expenditure, the ld AR submitted that the AO has disallowed the claim only for want of proof and hence penalty is not leviable on such kind of disallowance.

9. On the contrary the ld DR submitted that the assessee did not declare long term capital gain at the time of filing return of income though he was aware of the fact of sale of land. Accordingly the ld DR submitted that the said action of the assessee resulted in concealment of particulars of income. Since there was difference in the amount of long term capital gain computed by the assessee and that computed by the AO, the same has resulted in furnishing inaccurate particulars of income also. The ld AR furnished statement that the voluntary disclosure of income is also liable for penalty as per the decision rendered by Hon'ble Supreme Court in the case of MAK Data 38 Taxman.com 448.

10. We heard the rival contentions and perused the record. On perusal of the orders passed by the tax authorities, we noticed that there was inadvertent omission on the part of the assessee to declare the long term capital gain in his return of income, since the sale consideration received on sale of land was shown as sundry creditors in the books of account. However, the assessee has voluntarily declared the fact of omission to declare long term capital gain in the return of income before the AO during the course of asst. proceedings. Hence the ld CIT(A) has taken the view that penalty is not leviable on the long term capital gain declared by the assessee. For the sake of convince we extract below the observations made by the ld CIT(A) in this regard.

“6. I have gone through the assessment order, the penalty order carefully. In both the orders, the AO has drawn an inference that, the assessee has furnished

inaccurate particulars of income and has come to conclusion that penalty u/s.271(1)(c) is liveable just because in the return of income filed originally on 30/09/2013 the assessee has not shown the income from capital gains. The AO himself has mentioned in the assessment order that, the assessee during the course of hearing brought to the notice of the AO that, he has not disclosed the same in the return of filed. The AO accepted the assessee's explanation that, by the time the assessee came to know of this omission, the time to file a revised return of income even belatedly has expired. Therefore, the AO virtually accepted the assessee's version and assessed the capital gains after reworking out the same as per provisions of the Act. From this it is very clear that, there is a voluntary act of the assessee in bringing to the notice of the AO the omission to show income from capital Gains in the return filed. Thus, there is no escapement of income at all and there was no attempt by the AO to detect this omission. Before the AO, while filing his explanation to the show cause notice issued u/s.274 rws 271(1)(c) the assessee stated that, he being a doctor ignored with respect to the sale of land liable for capital gain tax. However, this transaction was taken into books of account and was disclosed during the assessment proceedings. There was no mensrea involved. Technically he was unaware as to how this transaction was to be disclosed. If it were the intention of the assessee not to show this transaction at all then

the whole transaction would not have been routed through the books. In support of his contention he relied on the decisions in the case of CIT Vs. Reliance Petroproducts (P) Ltd., of Supreme Court 322 ITR (2010) 158. The AO on the contrary stated in the penalty order that, 'merely expressing ignorance as to how capital gains on sale of land are to be disclosed does not hold water in view of the fact the assessee has been assessed to tax for many years and is represented by a CA. Based on this he has come to the conclusion that the assessee has been assessed to tax for many years and is represented by a CA. Based on this he has come to conclusion that the assessee has concealed his particulars of income at the time of filing his return of income by not showing the income from capital gains.

7. I have gone through the audited statement of accounts for the earlier 3 years including the assessment year under consideration. The balance sheets reveal the following financial affairs of the assessee.

Details	AY 2013-14 Rs.	AY 2012-13 Rs.	AY 2011-12 Rs.
Fixed assets	87,06,962	51,32,930	26,20,104
Investments	3,32,20,284	1,86,28,908	1,43,27,923
Current assets			
Cash on hand	71,199	37,177	24,519
Cash at bank	2,09,96,187	6,61,997	21,78,135
Total	6,36,23,433	2,44,90,723	2,22,38,203

8. *It can be seen from the above that during the year relevant to AY 2013-14 the assessee's financial position has gone up from Rs.44,90,723/- to Rs.6,36,23,4331- and this is mainly because of increase in cash at bank which has gone up to Rs.2,09,96,187/- from Rs.6,61,997/-. Considering the income offered from his profession the increase in bank accounts clearly speak of the fact that the sale of land has been reflected in the books of accounts but the assessee has omitted to show in his sheet of income computation. When the scrutiny proceedings were in progress, the AG ought to have gone through the balance sheet and enquired about the abnormal increase in bank accounts. Before pointing out this the assessee has brought to the notice of the AG of his omission to show income from capital gains, which the AG has virtually accepted and agreed with the assessee and brought to tax the capital gains after reworking out the same as per provisions of the Act. Thus, there has been no omission to show his income at all. Therefore, there has been no furnishing of inaccurate particulars of income as far as Rs.2,77,152831- is concealed because the same is disclosed by the assessee voluntarily before the AG could detect the omission. If at all there is any furnishing of inaccurate particulars it is with reference to the difference between the income assessed from capital gains at Rs.3,13,51,372/- and Rs.2,77,15,283/-. Thus the AO could have at best considered levying penalty*

u/s.271(1)(c) only on Rs.36,36,0891-. But this also will not come for levy of penalty because this income has arisen on account of reworking of the quantum of capital gains and not because of any omission to show the income.

9. *I have gone through the written submissions made by the assessee who has tried to establish the fact that there has been no concealment or furnishing of inaccurate particulars of income by referring to the remarks made by the AO in his assessment order at page-3 and also the comments at para -7.2 of the assessment order. These remarks made by the AO clearly spell out the fact that it was the assessee who brought to the notice of the AO as to how he was unable to show the income earned from capital gains in the return and he voluntarily offered the income of Rs.2,77,15,283/-."*

11. With regard to the disallowance of interest expenditure of Rs.1.05 lakhs, we have earlier noticed that said disallowance was made only for want of proof. In our view the decision rendered by Hon'ble Supreme Court in the case of Price Water House Coopers Pvt. Ltd., 348 ITR 306 would support the case of the assessee in respect of long term capital gain and the decision rendered by Hon'ble Supreme Court in the case of Reliance Petro Products Ltd., 322 ITR 158 would support the case of the assessee in the case of interest disallowance. The decision in the case of MAK Data Pvt.

Ltd. (supra), in our view, was rendered by Hon'ble Supreme Court in the context of amounts surrendered during the course of survey proceedings and hence the said decision is not applicable to the facts of the present case. In view of the above we do not any infirmity in the decision taken by the Id CIT(A) in deleting the penalty levied u/s 271(1)(c) of the Act. Accordingly we confirm his order.

11. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on **28th February 2020.**

Sd/-
(N.V Vasudevan)
Vice President

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, 28th February, 2019.

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore