

**आयकर अपील अाधिकरण, अहमदाबाद ढायपीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**" C " BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**  
**Ms MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 1936/AHD/2018  
अाधरण वष/Asstt. Year: 2009-2010

Smt Daxaben Anilkumar Thakkar, 55, Gandhi Gunj, Near Borsad Bus Stand, Borsad-388540.  <b>PAN: AAQPT3444B</b>	Vs.	D.C.I.T., Central Circle-2, Baroda.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Ms Urvashi Shodhan, A.R
Revenue by :	Shri L.P. Jain, Sr.D.R

सुनवाई का ताराख/Date of Hearing : 06/02/2020

घोषणा का ताराख /Date of Pronouncement: 04/03/2020

**आदेश / O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-12, Ahmedabad, dated 13/07/2018 (in short "Ld. CIT(A)") arising in the matter of Assessment Order passed under s.153A r.w.s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt.17/03/2015 relevant to the Assessment Year 2009-2010.

The assessee has raised the following grounds of appeal.

1. *The Ld.CIT(A) erred in law and on facts in confirming action of AO levying penalty of Rs.18,000/- invoking provisions of sec 271(1)(c) of the Act. Ld.CIT(A) ought to have deleted penalty levied by AO when appellant neither concealed income no furnished inaccurate particulars of income.*
2. *Ld.CIT(A) erred in law and on facts in confirming penalty levied by AO on deemed addition of Rs.3,26,600/- made u/s.50C of the Act on sale of disputed land resold to sellers at rate as per the court settlement.*

2. The first issue raised by the assessee is that the learned CIT(A) erred in confirming the levy of penalty of Rs. 18,000/- under the provision of section 271(1)(c) of the Act.

3. The brief fact is that the assessee is an individual and earning income from business and other source. The assessee during the year under consideration declared income of Rs. 540/- in the return filed u/s 153A of the Act. The AO during the assessment proceedings has made the addition for Rs. 3,26,600.00 representing the amount of difference between the stamp value and the actual value of the sale consideration shown by the assessee. The AO also initiated the penalty proceeding under section 271(1)(c) of the Act, for concealment of income.

3.1 In response, the assessee submitted that he has not received anything over and above the sale consideration received. Hence there is no any concealment of income. Accordingly the assessee claimed he has not concealed income and there should not be penalty for addition made under deeming provision. The assessee in this respect placed his reliance on the judgment of this ITAT in the case of Shree Chimanlal Manilal Patel bearing ITA No. 508/Ahd/2010.

3.2 However the AO disagreed with the contention by observing that the land was transferred at less than Jantri rate. Hence the same amount to concealment of income. Further if the proceeding u/s 153A would not have been carried out then the same should have escaped from tax. Accordingly the AO levied the penalty of

Rs. 17,952/- being 100% of tax sought to be evaded rounded off at Rs. 18,000/- only.

4. Aggrieved assessee preferred an appeal before the learned CIT (A) but no success.

Being aggrieved by the order of the of the learned CIT (A) the assessee is in appeal before us

5. The learned AR before us submitted that there cannot be any penalty for the addition made under deeming provisions as specified under section 50C of the Act.

6. On the other hand the learned DR supported the order of the authority below.

7. We have heard the rival contention of both the parties and perused the material available on record. The facts of case has been already summarized in above paragraph. Therefore we are not inclined to reproduce the same for the sake of brevity and convenience. The issue arises for our adjudication is whether in given fact and circumstances, the addition made under section 50C on account of difference in actual consideration and Jantri value amount to concealment of income. In our considered view the answer is in negative. As such there is no any finding by the authorities below that the assessee has received sales consideration over and above the amount declared by him. Indeed the sale consideration was agreed between parties out of court settlement which was approved by the court. Therefore in absence of any finding that the assessee has received sales consideration in excess of documented price, the assessee should not be visited with the penalty for the addition under deeming provision. In this regard we also find support and guidance from the order of Hon'ble Jurisdictional High Court in case of PCIT vs. Sun on Peak Hotel (P.) Ltd. reported in 95 taxmann.com 320 where in similar facts and circumstances the Hon'ble court held as under:

**11.** *As is well settled, capital gain can be levied on actual sale consideration and not on fair market value. Sub-section [1] of Section 50C of the Act makes a deviation in this principle and introduces a concept of deemed consideration for the purpose of Section 48 of the Act. There is thus a clear distinction between sale consideration actually received and deemed to have been received in terms of sub-section [1] of Section 50C of the Act. Application of sub-section [1] of Section 50C therefore cannot automatically give rise to penalty proceedings.*

In view of the above and after considering the facts in totality we set aside the order of the learned CIT (A) and direct the AO to delete the penalty imposed by him. Hence the ground of appeal of the assessee allowed.

8. In the result appeal of the assessee **allowed**.

**Order pronounced in the Court on 04/03/2020 at Ahmedabad.**

**-Sd-  
(MADHUMITA ROY)  
JUDICIAL MEMBER**

**-Sd-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated (True Copy) 04/03/2020  
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