

IN THE INCOME TAX APPELLATE TRIBUNAL "A"

(Virtual Court Hearing), BENCH KOLKATA

BEFORE SHRI S. S. GODARA, JM & DR. A.L. SAINI, AM

आयकर अपीलसं./I.T.A No.1603/Kol/2019

(निर्धारण वर्ष / Assessment Year: 2015-16)

Aravind Kumar Agarwal C/o Subash Agarwal & Associates, Advocates Siddha Gibson, 1, Gibson Lane, Suite 213, 2 nd Floor, Kolkata – 700069.	Vs.	ACIT(OSD), Ward-1(1), Siliguri
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCH6877K		
(Appellant)	..	(Respondent)

Appellant by : Shri Subash Agarwal, Advocate

Respondent by : Shri Dhrubajyoti Roy, JCIT

सुनवाईकीतारीख/ Date of Hearing : 08/07/2020

घोषणाकीतारीख/Date of Pronouncement : 22/07/2020

आदेश / O R D E R

Per Shri S. S. Godara:

This assessee's appeal for assessment year 2015-16 arises against the Commissioner of Income Tax (A), Siliguri dated 29.05.2019 passed in Case No.10/CIT(A)/SLG/2018-19 involving proceedings u/s 271(1)(c) of the Income Tax Act, 1961[in short 'the Act'].

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance canvassed in the instant lis seeks to reverse both the learned lower authorities' action imposing section 271(1)(c) penalty of Rs.1,85,764/- pertaining to alleged bogus long-term capital gain of

Rs.6,38,778/- adding during the course of assessment framed on 22.09.2017. The Revenue's case as per both the lower authorities' detailed discussion is the assessee has been rightly penalized u/s 271(1)(c) of the Act since he himself had surrendered his long-term capital gains claim to be exempt u/s 10(38) as bogus in the above-stated assessment. It therefore emphasizes that the assessee's said voluntary surrender makes him liable for consequential penalty as well. We see no reason to express our concurrence with the Revenue's stand. We make it clear that hon'ble apex court's landmark decision in Reliance Petroproducts' case 322 ITR 158 (SC) has settled the law that quantum and penalty proceedings stand on different footing and each and every disallowance/addition in the former does not ipso facto attract the latter penal provision. We keep in mind the very distinction and notice that the assessee has filed all the relevant supporting evidence in support of genuineness of this above-stated long-term capital gains derived during the course of scrutiny. That being the case, we find that this tribunal's coordinate bench's decision in Smt. Amita Tulsiyan ITA No.1513/Hyd/2018 dated 10.05.2019 holds that such an instance neither amounts to concealment nor furnishing of inaccurate particulars of income u/s 271 of the Act. We therefore delete the impugned penalty.

3. This assessee's appeal is allowed.

Order is pronounced in the open court on 22.07.2020.

Sd/-
(A. L. Saini)
ACCOUNTANT MEMBER

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 22/07/2020

RS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant- Aravind Kumar Agarwal
2. The Respondent- ACIT(OSD), Ward-1(1), Siliguri
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.