

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & Dr. A. L. SAINI, AM

आयकरअपीलसं./ITA No.281/AHD/2016

(निर्धारणवर्ष / Assessment Year: 2011-12)

Vijay Champak Patel, Pachhlu Faliyu, Near Water Tank, Bharthana, Vesu, Surat	Vs.	Income Tax Officer, Ward-6(4), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BEWPP0109Q		
(Assessee)		(Respondent)

Assessee by : Shri Rasesh Shah - CA

Respondent by : Shri O P Meena – Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 01/09/2020

घोषणाकीतारीख/Date of Pronouncement : 09/10/2020

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

1. By way of this appeal, the assessee has challenged correctness of the order dated 06.01.2016 passed by the learned CIT(A), in the matter of Penalty order under section 271(1)(c) of the Income Tax Act 1961 (‘the Act’), for the assessment year 2011-12. Grievances raised by the assessee are as follows:

“1. On the facts and in the circumstances of the case as well as law on the subject, the Commissioner of Income Tax has erred in confirming the action of the Assessing Officer in levying penalty of Rs.31,35,750/- u/s.271(1)(c) of the I.T. Act.

2. It is therefore prayed that the above penalty levied by the Assessing officer and confirmed by learned Commissioner of Income-tax (Appeals) may please be deleted.

3. Assessee craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.”

2. The facts of the case which can be stated quite shortly are as follows: The assessee had filed his return of income for the assessment year 2011-12 on 31/03/2012, declaring a total income to the tune of Rs.3,49,215/-. The assessment

proceedings under provisions of section 143(3) of the Income Tax Act, 1961 was completed on 07/03/2014 and the total income of the assessee for the period under consideration was assessed to be Rs.1,55,53,210/-. The assessee claimed deductions under section 54EC of the Act and under section 54F of the Act, which were denied by the assessing officer. The details of deductions claimed by the assessee are as follows:

- (i) Deduction under section 54EC of the Act Rs. 1,00,00,000
- (ii) Deduction under section 54EC of the Act. Rs. 52,04,000

3. In order to claim deduction under section 54EC of the Act, the assessee had invested Rs.1,50,00,000/- in specified bonds, the details of the investments are as follows:

Date	Amount (In Rs)	Certificate No.
31.03.2010	50,00,000	00078462
28.02.2011	50,00,000	00091846
30.04.2011	34,00,000	0100672
30.09.2011	16,00,000	01206329
Total	1,50,00,000	

4. The assessing officer examined the above investments and noted that out of the total investment of Rs. 1,50,00,000/- deduction u/s. 54EC of the Act, to the extent of Rs.50,00,000 /-, which was invested by the assessee on 31.03.2010, within the time limit, was allowed and for balance investments of Rs. 1,00,00,000/- (50,00,000 + 34,00,000 +16,00,000), the deduction u/s. 54EC of the Act was denied. While making the addition by way of disallowance of deduction u/s.54EC of the Act, the Assessing Officer had initiated penalty proceedings u/s.271(1)(c) of the Income Tax Act observing as follows:

“5.5. In light of the discussions made hereinabove, the arguments of the assessee in respect of allowance of deduction of Rs.1,50,00,000/- u/s. 54EC of the Act are not accepted. It is clear that the assessee does not fulfill the conditions laid down in section 54EC for claiming benefit of that section. However, deduction u/s. 54EC, to the extent of Rs.50,00,000 /-, which was invested by the assessee on 31.03.2010, i.e. before the date of sale deed is

allowed. Accordingly, the said deduction of Rs.1,00,00,000/- claimed by the assessee u/s. 54EC, to the Act is disallowed and added to the total income of the assessee. **By claiming incorrect deduction, the assessee has furnished inaccurate particulars of his income, for which, penalty proceedings u/s. 271(l)(c) r.w.s 274 of the Act is initiated separately on this point.”**

5. The assessee also claimed deduction under section 54F of the Act, at Rs.52,04,000/-against the long term capital gain earned by him. The Assessing Officer examined the veracity of the claim of deduction under section 54F of the Act and observed that assessee had deposited the amount of Rs.54,04,000/- in Bank of Baroda, Capital Gains Account Scheme (CGAS) on 02/02/2012. The assessing officer noticed that the asset (land) in question, out of which capital gains arose, was sold on 12/08/2010. As per the provisions of sub-section (4) of section 54F of the Act, such deposit has to be made in the Capital Gains Account Scheme before the due date of filing of return of income for that year. As per explanation (2) to sub-section (1) of section 139 of the Act, the due date of filing return of income for A.Y. 2011-12 was 30/09/2011, however, the Assessing Officer observed that assessee has failed to deposit such amount in the Capital Gain Account Scheme on or before the due date of filing his returned on income, but was deposited late on 02/02/2012.

6. The Assessing Officer also noted that the amount so deposited in the Capital Gain Account Scheme on 02/02/2012 was withdrawn by the assessee from the said capital account on 28/08/2012 and the assessee paid Long Term Capital Gains (LTCG) on the said withdrawn amount in the assessment year 2013-14. The assessee was asked to furnish the explanation as to why the deduction so claimed u/s.54F of the Act should not be disallowed. Since, the Authorized Representative (AR) of the assessee did not offer any explanation, therefore the Assessing Officer was of the view that assessee has not purchased any new residential house within the time frame allowed u/s.54F of the Act, therefore the Assessing Officer disallowed the claim of the assessee u/s.54F of the Act observing as follows:

“Thus, the assessee has failed to follow the conditions laid down in section 54F of the Act and accordingly, the assessee is held. to be not eligible for the benefits of section 54F of the Act. As such, the deduction of Rs.52,04,000/- claimed by the assessee u/s 54F is disallowed and added to the total income of

the assessee. By claiming incorrect deduction, the assessee has furnished inaccurate particulars of his income, for which, penalty proceedings u/s. 271(1)(c) r.w.s 274 of the Act is initiated separately on this point.”

7. During the penalty proceedings *vide* penalty order u/s.271(1)(c) dated 24/09/2014, the Assessing Officer noted that deduction u/s.54EC of the Act was to be allowed to the assessee on the amount of Rs.50,00,000/- invested within the specified period and not on the amount of Rs.50,00,000/-, 34,00,000/- and 16,00,000/- invested after the specified period. Therefore, Assessing Officer was of the view that the assessee had not brought the income to the tune of Rs.52,40,028/- (1,00,00,000/- + 52,04,028/-) within the ambit of taxation which was brought on record as a result of the assessment proceedings. Therefore, Assessing Officer *vide* his penalty order, imposed the penalty u/s.271(1)(c) at Rs.31,35,750/- observing as follows:

“7. In view of the above facts and circumstances, this is a fit case for levy of penalty u/s.271(1)(c) of the Act for concealment and furnishing inaccurate particulars of income. The amount of penalty leviable is worked out as under:-

<i>Concealed income/inaccurate particulars of income</i>	<i>Rs.1,52,40,028/-</i>
<i>Tax sought to be evaded on above income</i>	<i>Rs.31,35,750/-</i>
<i>Minimum penalty @10% of the tax sought to be evaded</i>	<i>Rs.31,35,750/-</i>
<i>Maximum penalty @300% of the tax sought to be evaded</i>	<i>Rs.94,07,250/-</i>

8. Considering the full facts and circumstances of the case, minimum penalty @100% of the tax sought to be evaded to the tune of Rs.31,35,750/- hereby levied and the Assessee is directed to pay an amount of Rs.31,35,750/- by way of penalty u/s.271(1)(c) of the Act within stipulated time as per the demand notice and challan issued and enclosed with this order.”

8. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the penalty imposed by the Assessing Officer. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

9. Shri Rasesh Shah, Id. Counsel for the assessee, begins by pointing out that there is inconsistency in the assessment order framed by the Assessing Officer under

section 143(3) of the Act and the penalty order framed by the Assessing Officer u/s.271(1)(c) of the Act, so far the charge/ accusation on the assessee is concerned. In the assessment order framed u/s.143(3) of the Income Tax Act dated 31/03/2011, the assessing officer has concluded stating that the '*assessee has furnished inaccurate particulars of his income*' whereas in the penalty order framed by the Assessing Officer u/s.271(1)(c) of the Act, the Assessing Officer came to the conclusion stating that: '*this is a fit case for levy of penalty u/s.271(1)(c) of the Act for concealment and furnishing inaccurate particulars of income.*' Thus, Id. Counsel explained the Bench that there is no definite (fix) charge on the assessee as to whether the assessee should be penalized for "furnishing inaccurate particulars of income" or "for concealment of income" therefore, on this account the penalty initiated by the assessee officer is bad in law and therefore the penalty so levied by the assessing officer should be cancelled.

10. On merits, the Id. Counsel submitted before us that first of all, the assessee has made a *bona fide* claim of deductions under section 54EC and under section 54F of the Act and it is not a false claim made by the assessee to deceive the revenue, therefore, the assessee's case falls in the category of *bona fide* claim of deductions therefore penalty should not be levied and for that Id. Counsel relied on the Judgment of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petroproducts, 322 ITR 158 (SC). The Ld. Counsel of the assessee in his written submissions explained the facts in respect of deduction under section 54EC of the Act, in the following manner:

Sr. No.	Date of receipt	Amount received	Investment Rs.	Date of investment	Remarks	
1	26 th March 2010	50,00,000/-	50,00,000/-	31.03.2010	A.O. allowed but CIT(A) enhanced, however ITAT deleted	Penalty levied
2	08 th Feb.2010	84,00,000/-	50,00,000/-	28.02.2010	Allowed by CIT(A)	Penalty was not levied
3			34,00,000/-	30.04.2011	A.O. made addition,	

	08.08.2011	69,04,000/-	16,00,000/-	30.09.2011	confirmed by CIT(A) and upheld by ITAT. (Penalty levied)
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11. On the basis of aforesaid facts the Ld. Counsel explained that on the disallowance shown at Serial No.1, which has been deleted by Tribunal (in ITA No. 2687/Ahd/2014 dated 24/07/2017) thus, no penalty is leviable on this disallowance. So far as disallowance at Serial No. 3 is concerned the Tribunal in para second of page 12 of the order has allowed deduction under section 54EC fully, however, in first part of the same para confirmed the disallowance under section 54EC of Rs. 50,00,000/-. It was argued that once the Tribunal has taken a view that the assessee is entitled for full deduction under section 54EC, no penalty under section 271(1)(c) is leviable on the assessee.

12. On the disallowance under section 54F of Rs. 52,04,000/- of the Act, the ld. Counsel submits that the assessee made deposit of entire amount with the bank in the capital gain scheme on 02.02.2012 before the end of the assessment year and before due date of filing the return of income prescribed under section 139(4) of the Act. In support of his submissions, ld. Counsel for the assessee relied on the decision of Gauhati High Court in CIT vs. Rajesh Kumar Jalan 157 taxmann 398 (Gau.)

13. The ld. Counsel submitted before the Bench that during the assessment proceedings, assessee tendered his *bonafide* explanation that he was under the *bonafide* belief supported by various judicial pronouncements by different courts/ITAT Benches that he was entitled to get deduction from Long Term Capital Gain on such investments made by him in Infrastructure Bonds u/s.54EC of the Act. Regarding the claim of deduction u/s.54F of the Act, the ld. Counsel explained the Bench that because assessee could not utilize the said amount for purchasing a 'new residential house' within the prescribed limit and therefore, the assessee had withdrawn the amount of Rs.52,04,000/- on 29.08.2012 and offered the said amount as Long Term capital Gain (LTCG) in the subsequent year's Return of Income filed

for A.Y. 2013-14 as per the provision of section 54F(4] of the Act. Hence, ld. Counsel submits before us that there is no *mala fide* intention on the part of the assessee to defraud the revenue and hence no adverse inference could be drawn that the assessee had concealed any income or had furnished inaccurate particulars of income. The ld. Counsel finally submits that the penalty order is liable to be quashed on legal issue as well as on merit.

14. On the other hand, the ld. DR for the Revenue submitted that the assessee has claimed false deductions under section 54EC and under section 54F of the Act and therefore it is tantamount to furnish “inaccurate particulars of income”. The ld.. DR also contends that to mention the different accusation/charge in the assessment order under section 143(3) and penalty order under section 271(1) (c) of the Act does not vitiate the penalty levied by the assessing officer as it is only a typographical error in quoting the charge in assessment order as ‘*assessee has furnished inaccurate particulars of his income*’ and in penalty order as ‘*concealment and furnishing inaccurate particulars of income*’ . Since the assessee has claimed false deductions under section 54EC and under section 54F of the Act therefore penalty under section 271(1)(c) of the Act, may be levied on both limbs, that is, “*concealment and furnishing inaccurate particulars of income*’. Apart from this, the ld. DR relied on the stand taken by the assessing officer in his penalty order u/s.271(1)(c) of the Act which we have already noted in our earlier para and is not being repeated for the sake of brevity.

15. We have considered the submissions of both the parties and carefully gone through the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld. CIT(A) and other materials brought on record. We note that assessing officer in the assessee`s case held that assessee made wrong claim of deductions u/s.54EC and 54F of the Act against the Long Term Capital Gain (LTCG) earned on sale of land situated at Vesu, Surat. The impugned land, along with, other co-owners was sold on 12.08.2010 wherein the assessee received his 1/6th share at Rs.2,03,04,000/-. The details of sale consideration have

been mentioned in Para 3 of the penalty order. After claiming indexed cost of acquisition of Rs.63,972/-, net taxable LTCG was worked out at Rs.2,02,40,028/-. Till this point, there is no dispute between the assessee and department. Against this Long Term Capital Gain (LTCG), the assessee claimed deduction of Rs.1,50,00,000/- u/s.54EC by making investing in NHA1 Bonds & Rs.52,04,000/- u/s.54F of the Act by depositing this amount under Capital Gain Account Scheme of I.T. Act. The details of investment in NHAI Bonds u/s.54EC are as under:

Date of Investment	Amount (Rs.)	Certificate No.
31.03.2010	50,00,000/-	00078462
28.02.2011	50,00,000/-	00091846
30.04.2011	34,00,000/-	01200672
30.09.2011	16,00,000/-	01206329

16. During the assessment proceedings, the Id. AO allowed deduction of Rs.50,00,000/- made in Bonds on 31.03.2010 (made prior to date of transfer) but disallowed the other claims amounting to Rs.1,00,00,000/- because investments were not made within 6 months from date of transfer which falls on 13.02.2011. However, the CIT(A) allowed claimed for deduction u/s.54EC against the investment of Rs.50,00,000/- made on 28.02.2011 instead of Rs.50,00,000/- made on 31.03.2010 (prior to the date of transfer). Accordingly, the amount of disallowance of claim of deduction u/s.54EC remained unchanged. Further, the Id. AO observed that the amount of Rs.52,04,000/- was made in the specified Capital Gain Account beyond the stipulated time. The AO has levied penalty against both these wrong claims of deductions made u/s.54EC at Rs. 1,00,00,000/- and u/s.54F at Rs.52,04,000/-. On appeal Id. CIT(A) has confirmed the penalty imposed by the assessing officer.

17. We note that the first grievance of the Id. Counsel is that there is no any definite charge/ accusation on the assessee, whether initiation of penalty proceeding is on account of '**concealment of income**' or on account of '**furnishing inaccurate**

particulars of income’. Let us first examine the charge in the assessment order and penalty order:

(a) We note that during the assessment proceedings u/s 143(3) of the Act, while making the addition by way of disallowance of deduction u/s.54EC of the Act, the Assessing Officer had initiated penalty proceedings u/s.271(1)(c) of the Income Tax Act observing as follows:-

“By claiming incorrect deduction, the assessee has furnished inaccurate particulars of his income, for which, penalty proceedings u/s. 271(1)(c) r.w.s 274 of the Act is initiated separately on this point.”

In respect of deduction under section 54F of the Act, during the assessment proceedings u/s 143(3) of the Act, while making the addition the Assessing Officer had initiated penalty proceedings u/s.271(1)(c) of the Income Tax Act observing as follows:-

“By claiming incorrect deduction, the assessee has furnished inaccurate particulars of his income, for which, penalty proceedings u/s. 271(1)(c) r.w.s 274 of the Act is initiated separately on this point.”

(b) During the penalty proceedings u/s 271(1)(c) of the Act, in respect of both deductions u/s 54 EC and u/s 54F of the Act, the Assessing Officer had imposed the penalty u/s.271(1)(c) of the Income Tax Act observing as follows:-

“In view of the above facts and circumstances, this is a fit case for levy of penalty u/s.271(1)(c) of the Act for concealment and furnishing inaccurate particulars of income.”

18. It is abundantly clear from above narrated facts, in (a) and (b) that assessing officer has initiated penalty proceedings for both the deductions u/s 54 EC and u/s 54F of the Act in the assessment order for ***“inaccurate particulars of his income”***, whereas in the penalty order under section 271(1) (c) of the Act the assessing officer imposed penalty for both the deductions u/s 54 EC and u/s 54F of the Act, ***“for concealment and furnishing inaccurate particulars of income.”*** Hence, there is no definite charge (fix charge), as pointed out by the ld. Counsel for the assessee.

19. As stated above, no clear finding was given by the assessing officer regarding the invocation of the limb in the penalty order the assessing officer levied the

penalty for both the limbs “**for concealment and furnishing inaccurate particulars of income.**” under section 271(1)(c) of the Act, whereas in the assessment order the assessing officer initiated penalty only on one limb that is “**for furnishing inaccurate particulars of his income**”, . We note that Hon`ble Supreme Court in the case of T Ashok Pai - 292 ITR 11 (SC) held that “concealment of income” and “furnishing of inaccurate particulars of income” carry different connotations. The Hon`ble Gujarat High Court in case of Manu Engineering Works -122 ITR 306 (Guj.) held that the penalty order has to be clear as to limb for which it is levied and the position being unclear penalty is not sustainable. Further, on the identical facts, Hon`ble Gujarat High Court in case of Nayan C. Shah vs. ITO [Tax Appeal No. 543 of 2012 (Guj- HC)] held. as follows:

"11. Another notable aspect of the matter is that while the Assessing Officer has imposed penalty on the ground that the assessee has furnished inaccurate particulars of income, the Tribunal has set aside the order of the Commissioner (Appeals) by holding that the assessee has suppressed the actual particulars of income by not making disallowance under section 40(a)(ia) of the Act. Thus, the Assessing Officer has imposed penalty on the ground of furnishing inaccurate particulars, whereas the Tribunal has upheld. the order of the Assessing Officer on the ground of concealment of particulars. It is by now well settled that while issuing a notice under section 271(1)(c) of the Act, the Assessing Officer is required to specify as to what is the default on the part of the assessee, as to whether the case is one of furnishing inaccurate particulars, or whether it is a case of concealment of income, or both. In the facts of the present case, the Assessing Officer has proceeded on the footing that inaccurate particulars were filed by the assessee, whereas the Tribunal has held. that the assessee had suppressed particulars for the year under consideration. Under the circumstances, the Tribunal, having confirmed the penalty imposed by the Assessing Officer on the ground of suppression of actual particulars in respect of which the assessee was not put to notice, the order of the Tribunal is rendered unsustainable on this ground also."

20. Thus, we note that the assessing officer has initiated the penalty proceedings on one footing and concluded on other footing. In instant case, the “**Concealment of particulars of income**” was not the charge against the assessee; the charge was “**for furnishing inaccurate particulars of income**”. Therefore, in our opinion, the basis of levy of penalty itself is not correct, hence penalty order under section 271(1)(c) of the Act needs to be quashed.

21. On merits of the case, we note that the assessee has furnished all the particulars regarding claim of deduction u/s.54EC and 54F of the Act in the Return of Income. During the course of assessment proceedings, all the material facts relating to investment in Bonds and specified account were disclosed to the assessing officer. It is further claimed that the assessee had received the amount of sale consideration in piecemeal manner and assessee had invested the said amount of Rs.1,50,00,000/- u/s.54EC of the Act, in three different financial years, that is, F.Y. 2009-10, 2010-11 and 2011-12. The Id. Counsel submitted before the Bench that during the assessment proceedings, assessee tendered his *bonafide* explanation that he was under the *bonafide* belief supported by various judicial pronouncements by different courts/ITAT Benches that he was entitled to get deduction from Long Term Capital Gain on such investments made by him in Infrastructure Bonds u/s.54EC of the Act. Regarding the claim of deduction u/s.54F of the Act, the Id. Counsel explained the Bench that because assessee could not utilize the said amount for purchasing a 'new residential house' within the prescribed limit and therefore, the assessee had withdrawn the amount of Rs.52,04,000/- on 29.08.2012 and offered the said amount as Long Term capital Gain (LTCG) in the subsequent year's Return of Income filed for A.Y. 2013-14 as per the provision of section 54F(4) of the Act. Hence, Id. Counsel submits before us that there is no *mala fide* intention on the part of the assessee to defraud the revenue and hence no adverse inference could be drawn that the assessee had concealed any income or had furnished inaccurate particulars of income.

22. We note that the assessee has made a *bona fide* claim of deductions under section 54EC and under section 54F of the Act and it is not a false claim made by the assessee to deceive the revenue, therefore, the assessee's case falls in the category of *bona fide* claim of deductions hence the penalty should not be levied. At this juncture it is appropriate to quote the judgment of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts, 322 ITR 158 (SC), wherein it was held as follows:

“10. It was tried to be suggested that Section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the Legislature.

11. In this behalf the observations of this Court made in Sree Krishna Electricals v. State of Tamil Nadu & Anr. [(2009) 23VST 249 (SC)] as regards the penalty are apposite. In the aforementioned decision which pertained to the penalty proceedings in Tamil Nadu General Sales Tax Act, the Court had found that the authorities below had found that there were some incorrect statements made in the Return. However, the said transactions were reflected in the accounts of the assessee. This Court, therefore, observed: "So far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's account books. Where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities include these items in the dealer's turnover disallowing the exemption, penalty cannot be imposed. The penalty levied stands set aside."

The situation in the present case is still better as no fault has been found with the particulars submitted by the assessee in its Return.

12. The Tribunal, as well as, the Commissioner of Income Tax (Appeals) and the High Court have correctly reached this conclusion and, therefore, the appeal filed by the Revenue has no merits and is dismissed.”

23. The judgment of the hon`ble Supreme Court in the case of Reliance Petroproducts(supra) is squarely applicable to the facts of the assessee`s case under consideration. As the assessee has furnished all the particulars regarding claim of deduction u/s.54EC and 54F of the Act in the Return of Income, and during the course of assessment proceedings, all the material facts relating to investment in

Bonds u/s.54EC and specified account 54F of the Act were disclosed to the assessing officer. The assessee also explained that he had received the amount of sale consideration in piecemeal manner and invested the said amount of Rs.1,50,00,000/- u/s.54EC of the Act, in three different financial years, that is, F.Y. 2009-10, 2010-11 and 2011-12. Therefore, we noticed that no fault has been found by the Id. CIT(A) with the particulars submitted by the assessee in its Return of income. Besides, as we noted above that the charge against which the penalty is to be levied is not specific and when the charge itself is not specific and is vague, the penalty should not be levied. Hence, we are not inclined to accept the contention of the Id. CIT(A) in confirming the penalty imposed by assessing officer under section 271(1) (c) of the Act, therefore we delete the penalty of Rs. 31,35,750/-.

24. In the result, appeal filed by the assessee is allowed.

Order is pronounced in the open court on 09/10/2020

Sd/-
(PAWAN SINGH)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(Dr. A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date:09/10/2020

Samanta, PS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Assessee
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, सूरत / DR, ITAT, Surat
6. गार्डफाईल / Guard file.

सत्यापितप्रति

// True Copy //

By Order

Assistant Registrar/ Sr.PS/ PS