

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1277/JP/2019
निर्धारण वर्ष/Assessment Year :2010-11

Shri Shyam Sunder Duseja F8/47, Chitrakoot Scheme, Vaishali Nagar, Jaipur	बनाम Vs.	ITO, Ward 6(3), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAVPD6571A		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Sh. Sunil Gogra (Adv.)
राजस्व की ओर से / Revenue by : Miss Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 09/02/2021
उदघोषणा की तारीख / Date of Pronouncement: 15/02/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)- 02, Jaipur dated 22.08.2019.

2. The only effective ground of appeal relates to levy of penalty u/s 271(1)(c) on difference between actual sale consideration and DLC value of immovable property sold by the assessee.

3. During the course of hearing, the Id. AR submitted that during the financial year relevant to impugned assessment year, the assessee had sold a shop for a consideration of Rs. 3,50,000/- value of which was

adopted by the stamp duty authority at Rs. 6,10,313/-. It was submitted that in order to avoid any litigation, the assessee in his return of income declared the capital gains by applying the provisions of section 50C by taking the sale consideration of Rs. 6,10,313/- as adopted by stamp duty authority as against actual sale consideration of Rs. 3,50,000/- received by the assessee resulting in the additional tax liability which has been duly paid, however, the same has been made the basis for levy of penalty u/s 271(1)(c) and which is the subject matter of present penalty proceedings.

4. It was submitted that the addition tax liability has arisen on account of applying the deeming provisions of section 50C of the Act. It was submitted that during the course of assessment proceedings, the assessee has furnished all the relevant facts and documents genuineness of which have not been doubted by the Assessing Officer. It was further submitted that it is not the case where it has been alleged by the Assessing officer that the assessee has received any consideration over and above the consideration as declared in the sale deed. It was accordingly submitted that merely on account of deeming provisions, it cannot be construed to be a case of furnish of inaccurate particulars of income or concealment of particulars of income. It was submitted that section 50C is a deeming provision and it has to be strictly construed and cannot be extended for the purpose of levy of penalty. It was further submitted that even penalty provisions needs to be construed strictly and only where there is any positive evidence of concealment of income, the penalty can be levied. It was submitted that in the instant case, the assessee has suo-moto adopted the deemed sale consideration u/s 50C while filing the return of income and which has been accepted, thus, there is no question of furnish of inaccurate particulars of income or concealment of particulars of income

5. In support of his contentions, the reliance was placed on the Jaipur Bench decision in case of Anita Beniwal, Alwar vs. ITO, Ward 1(4), Alwar (*ITA No. 743/JP/2012 dated 05/06/2015*), the Lucknow Bench decision in case of ACIT vs. Lohia Starlinger Ltd. (*ITA No. 42/LKW/2014 dated 21.08.2014*), the Mumbai Benches decision in case of Renu Hingorani vs. ACIT (*ITA No. 2210/Mum/2010 dated 22.12.2010*) and in case of DCIT vs. Trans Freight Containers Ltd. (*ITA No. 2337/Mum/2016 dated 24.02.2017*), the decision of Hon'ble Gujarat High Court in case of PCIT, Vadodra vs. Sun on Peak Hotel Pvt. Ltd. (*R/Tax Appeal No. 556/2018 dated 12.06.2018*) and the Hon'ble Supreme Court decision in case of CIT vs. Reliance Petroproducts Pvt. Ltd. [2010] 322 ITR-158.

6. Per contra, the Id. DR submitted that the assessee has not filed return of income originally u/s 139(1) of the Act though, he has sold the property and earned capital gains thereon. The assessee has declared his income in response to notice u/s 148 of the Act which has been accepted by the Assessing Officer and penalty has simultaneously been initiated against him. It was submitted that the Assessing Officer has levied penalty u/s 271(1)(c) by holding that the assessee had taxable income and not filed his return of income voluntarily and only when he received the notice u/s 148 of the Act, the return has been filed. It was accordingly submitted that it is a clear case of concealment of income and if notice u/s 148 was not issued, the assessee would not have come forward and declared capital gains in his return of income. She accordingly supported the order of the lower authorities.

7. In his rejoinder, the Id AR submitted that if the total income of the assessee is computed by taking the sale value of shop at Rs 3,50,000/- instead of value adopted by the stamp duty authorities, total income of

the assessee remains below the taxable limit and hence, the assessee didn't file his return of income originally and there was thus a reasonable cause for not filing the return of income. However, as soon as the assessee received the notice u/s 148, in order to avoid any litigation, the return of income was filed taking the value of shop as adopted by the stamp duty authorities and the tax liability arising on account of such differential sale consideration was duly paid by way of self-assessment tax.

8. We have heard the rival contentions and perused the material available on record. This matter has been considered by the Jaipur Benches in the case of **Anita Beniwal, Alwar vs. ITO, Ward 1(4), Alwar** (supra) wherein it was held as under:-

"6. We have heard the rival contentions of both the parties and perused the material available on the record. The assessee had shown sale consideration at Rs. 8 lacs whereas as per section 50C of the Act, the Stamp Authority has assessed the value of property at Rs. 12,35,730/-, there was difference at Rs. 4,75,658/- in the capital gain, which has been accepted by the assessee during the course of assessment proceedings. The case law referred by the assessee are squarely applicable. In this case also, there is no evidence with the Revenue to prove that the assessee has received much more than reflected in the return. The addition was on account of deeming provision, therefore, we delete the penalty confirmed by the Id. CIT(A)."

9. Further, the matter has been considered by the Lucknow Benches in the case of **ACIT vs. Lohia Starlinger Ltd** (supra) wherein following the decision of the Hon'ble Calcutta High Court in the case of Madan Theatres Ltd., it was held as under:

*"4. We have considered the rival submissions. We find that although various additions were made by the Assessing Officer in the assessment but in quantum appeal, CIT(A) has confirmed only two additions being Rs.67,41,156/- in respect of addition on account of long term capital gain and Rs.19,30,014/- on account of addition u/s 14A of the Act. In respect of both these additions, the Assessing Officer imposed penalty of Rs.40 lacs. When the assessee carried the matter in appeal before the CIT(A), the penalty was deleted by CIT(A) and now the Revenue is in appeal before us. Regarding the penalty imposed by Assessing Officer in respect of addition in respect of long term capital gain, the CIT(A) has followed the judgment of Hon'ble Calcutta High Court in the case of Madan Theatres Ltd. (supra). In that case, **it was held by Hon'ble Calcutta High Court that when the addition is made by invoking the provisions of section 50C without bringing any evidence on record that the assessee actually received more amount than shown by it, penalty is not justified.** In the present case also, the addition has been made by the Assessing Officer merely by invoking the provisions of section 50C and no evidence has been brought on record by him that any money in addition to declared sale proceeds was received by the assessee and hence, respectfully following this judgment of Hon'ble Calcutta High Court, we hold that no interference is called for in the order of CIT(A) on this issue."*

10. Further, the matter has been considered by the Mumbai Benches in the case of **Renu Hingorani, Mumbai vs. ACIT, Mumbai** (supra) wherein it was held as under:-

"8. We have considered the rival contentions and relevant record. We find that the AO had made addition of Rs.9,00,824/- being difference between the sale consideration as per sale agreement and the valuation made by the Stamp Valuation Authority. Thus, the addition has been made by the AO by applying the provisions of section 50C of the Act. It is evident from the assessment order that the AO has not questioned the actual consideration received by the assessee but the addition is made purely on the basis of deeming provisions of the Income Tax Act, 1961. The AO has not given any finding that the actual sale consideration is more than the sale consideration admitted and mentioned in the sale agreement. Thus it does not amount to concealment of income or furnishing inaccurate particulars of income. It is also not the case of the revenue that the assessee has failed to furnish the relevant record as called by the AO to disclose the primary facts. The assessee has furnished all the relevant facts, documents/material including the sale agreement and the AO has not doubted the genuineness and validity of the documents produced before him and the sale consideration received by the assessee. Under these facts and circumstances, it cannot be said that the assessee has not furnished correct particulars of income. Merely because the assessee agreed for addition on the basis of valuation made by the Stamp Valuation Authority would not be a conclusive proof that the sale consideration as per this agreement was incorrect and wrong. Accordingly the addition because of the deeming provisions does not ipso facto attract the penalty u/s 271(1)(c). Hence in view of the decision of the Hon'ble Supreme Court in the case of CIT V/s Reliance Petroproducts Pvt.Ltd (supra), the penalty levied u/s 271(1)(c) is not sustainable. The same is deleted."

11. We therefore find in all these cases, the Hon'ble Calcutta High Court and the Coordinate Benches have consistently held that when the addition has been made by the Assessing officer by invoking the provisions of section 50C without bringing any evidence on record that the assessee actually received any amount over and above the declared sale consideration as per sale deed, penalty u/s 271(1)(c) is not justified. In the present case also, no evidence has been brought on record by the Assessing officer that any money over and above the sale consideration as per the sale deed was received by the assessee. At the same time, we find that the assessee has suo-moto adopted the value of the immovable property as determined and adopted by the stamp duty authorities which to our mind, put the case of the assessee on a better footing and in any case, cannot be worse off as compared to aforesaid cited cases where the additions have been made by the Assessing Officer by invoking the provisions of section 50C and which later on, have been accepted by the respective assesseees by not going in further appeal. It is therefore a case of self declaration and self adoption of value as adopted by stamp duty authorities while filing the return of income by the assessee and which has been accepted in entirety by the Assessing officer. Where the value so declared in the return of income has been accepted by the Assessing officer, there cannot be any basis for levy of penalty for concealment of income.

12. The Revenue's only contention is that such return of income has not been filed voluntarily and has been filed only in response to notice u/s 148 and thus, in a way, it is a case of deemed concealment though we find that the provisions of explanation 3 to section 271(1)(c) have not been specifically invoked by the Assessing officer either at the time of initiating or while passing the penalty order. If we look at the provisions of

explanation 3 to section 271(1)(c) which talks about cases of deemed concealment, it read as under:

"[Explanation 3. – Where any person fails, without reasonable cause, to furnish within the period specified in sub-section (1) of section 153 a return of his income which he is required to furnish under section 139 in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause (i) of sub-section (1) of section 142 or section 148 and the Assessing Officer or the Commissioner(Appeals) is satisfied that in respect of such assessment year such person has taxable income, then, such person shall, for the purposes of clause (c) of this sub-section, be deemed to have concealed the particulars of his income in respect of such assessment year, notwithstanding that such person furnishes a return of his income at any time after the expiry of the period aforesaid in pursuance of a notice under section 148."

13. The aforesaid explanation 3 of Section 271(1)(c) had come up for interpretation before the **Hon'ble Gujarat High Court** in case of **Chhaganlal Suteriya V. ITO** (2011) 337 ITR 350 (Guj) wherein the Hon'ble Gujarat High Court observed as under:

"A mere failure to furnish a return of income does not amount to concealment u/s 271(1)(c) of the Income-tax Act, 1961. But the introduction of Explanation 3 to section 271(1) with effect from April 1, 1976, has changed the law on the point in certain cases. For the purpose of falling within the purview of Explanation 3, (i) a person should not have been previously assessed (that is, he should be a new assessee); (ii) he should have failed without reasonable cause to furnish a return of income for Assessment Year 1989-90 or any

year subsequent thereto within two years from the end of the Assessment Year concerned; (iii) no notice should have been issued to him u/s 142(1) or section 148 of the Act till the expiry of the two year period, and (iv) the concerned officer is satisfied that in respect of such Assessment Year, such person had taxable income. In such cases, Explanation 3 provides that such person shall be deemed to have concealed the particulars of his income within the meaning of clause (c) of section 271(1) of the Act for such Assessment Year. In such an eventuality, even if the person concerned files a return after the expiry of the period of two years in pursuance of a notice u/s 148 of the Act, the deeming provisions of Explanation 3 shall still have application. The conditions for the applicability of Explanation 3 to section 271(1) are cumulative and each of the conditions has to be established for the purpose of invoking the provision."

14. In the instant case, the first condition that a person has not been previously assessed to tax under this Act has been omitted by Finance Act, 2002 w.e.f. 1.4.2003 and is thus no more on the statute. The second condition is that he should have failed without reasonable cause to file the return. We find that there was a reasonable cause with the assessee for not filing the return originally within prescribed time as he holds a belief that his taxable income was below the taxable limit and no tax liability arises thereon considering the actual sale consideration received by the assessee on sale of shop amounting to Rs 3,50,000/-. The bonafide of such belief has not been challenged by the Revenue, as we have noted above that there is no finding or adverse material that the assessee has received any consideration over and above the sale consideration of Rs 3,50,000/. We therefore find that there was a reasonable cause for the assessee for not filing the return of income originally within prescribed

time and thus, the second condition is not satisfied in the instant case. The third condition of non-issuance of any notice either under section 142(1) or section 148 within prescribed time under section 153(1) is satisfied as the notice u/s 148 has only been issued on 29.03.2017. Therefore, given the reasonable cause for non-filing the return of income, one of the essential conditions for invocation of explanation 3 to section 271(1)(c) is not satisfied and thus, the case of the assessee doesn't fall within the meaning of deemed concealment as so defined in the said explanation and the contentions so advanced by the Revenue cannot be accepted.

15. In light of aforesaid discussions and in the facts and circumstances of the present case, we are of the considered view that where the value so declared in the return of income has been accepted by the Assessing officer and infact, the returned income has been accepted, there cannot be any basis for levy of penalty u/s 271(1)(c) for concealment of income. In the result, the penalty so levied is hereby directed to be deleted and the matter is decided in favour of the assessee.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 15/02/2021.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 15/02/2021
*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Shyam Sunder Duseja, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 6(3), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1277/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar