

THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 3233/Mum/2015 (Assessment Year 2008-09)

Smt. Chandrikaben K. Shah Unit No. 8, 16, Sarvodaya Mill Compound, Tardeo Road, Mumbai-400 034. PAN : ANAPS5776Q (Appellant)	Vs.	ITO-19(1)(3) Mumbai. (Respondent)
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Assessee by	None
Department by	Shri Brajendra Kumar
Date of Hearing	04.02.2021
Date of Pronouncement	09.02.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A) dated 30.3.2015 and pertains to assessment year 2008-09.

2. The issue raised is that learned CIT(A) erred in sustaining penalty levied u/s. 271(1)(c) of the I.T. Act amounting to Rs. 7,78,864/-.

3. Brief facts of the case are that the Assessing Officer during the course of assessment proceedings, had rejected the assessee's claim of deduction u/s.54 in respect of Long Term Capital Gains on sale of flat. It was seen by the Id. A.R. that the assessee had made L.T.C.G. of Rs.3 2,74,885/- but the same was claimed exempt on the ground that the assessee had purchased a new property. However upon making enquiries it was found that firstly, the purchase agreement submitted by the assessee was not registered. Secondly, the stamp paper on which the agreement was typed was said to have been issued by the MSSIDC Ltd., Ground Floor of MHADA Complex, Bandra (East), Mumbai-51, but the said entity in response to letter u/s.133(6) stated that the stamp paper in question was issued to one, Shri B.K. Sharma and not to the

assessee, and thus, in the totality of facts, Ld. A.O. held that the assessee had made a fictitious claim u/s.54. Upon assessee's appeal learned CIT(A) confirmed the disallowance.

4. Penalty u/s. 271(1)(c) of the Act was also levied on the addition. In the penalty order the Assessing Officer copied the order of learned CIT(A) and thereafter referred to Hon'ble Supreme Court decision in the case of Union Vs. Dharmendra Textile Processors (295 ITR 244) that mens rea is not essential in section 271(1)(c) of the Act. He held that the assessee had not declared true and correct particulars. He further held that the assessee was guilty of concealment.

5. Upon assessee's appeal learned CIT(A) affirmed the levy of penalty. He also relied upon the decision of Dharmendra Textile Processors (supra).

6. Against the above order the assessee is in appeal before the ITAT. We have heard learned Departmental Representative and perused the records. We find that the penalty in this case has been levied with reference to denial of exemption u/s. 54 of the Act. The assessee has furnished all necessary particulars. The Assessing Officer was not satisfied and he proceeded to disallow the claim of exemption u/s. 54 of the IT Act. We note that the denial of assessee's claim cannot ipso facto lead to a conclusion that the assessee is liable to be visited with vigorous of penalty u/s. 271(1)(c) of the Act. This proposition is duly supported by the decision of Hon'ble Supreme Court in the case of Reliance Petro Products Pvt. Ltd., (322 ITR 158)(SC). In the present case we find that the assessee has furnished particulars of its claim. The Assessing Officer has found fault with the registration documents and accordingly denied exemption. In our considered opinion the authorities below are also aware of this proposition. They have wrongly relied upon the decision of Hon'ble Supreme Court in the case of Dharmendra Textile Processors (supra). The decision from Dharmendra Textile Processors (supra) never provided that penalty u/s. 271(1)(c) of the Act has to be levied even in the case

where claim cannot be said to be malafide. Hence, in our considered opinion the assessee's conduct is not contumacious to warrant levy of penalty. In this regard we also rely upon the decision of Hon'ble Supreme Court in the case of Hindustan Steel Vs. State of Orissa (83 ITR 26), wherein the larger bench of the Hon'ble Supreme Court held that the authority may not levy penalty if the conduct of the assessee is not found to be contumacious.

7. In our considered opinion the assessee's claim in this case was not ex-facie bogus. Hence, assessee's conduct cannot said to be contumacious as the assessee has submitted all necessary particular. Hence, in the background of the aforesaid discussion and precedent, penalty u/s. 271(1)(c) of the Act is not sustainable. Accordingly, we set aside the orders of the authorities below and delete the penalty.

8. In the result, this appeal filed by the assessee stands allowed.

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 9.2.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 09/02/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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