

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.1617/Del/2016
Assessment Year: 2011-12

DCIT (E) Circle 2 Gurgaon	Vs	Smt. Meena Kumar H. No.2, South City-1, Gurgaon PAN No. ACUPK3342F
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Anima, Sr. DR
Respondent by	None

Date of hearing:	19/07/2021
Date of Pronouncement:	19/07/2021

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-2, Gurgaon dated 28.01.2016 pertaining to A.Y. 2010-11.

2. The sum and substance of the grievance of the revenue is that the CIT(A) erred in deleting the penalty levied by the AO u/s.271 (1) (c) of the Act.

3. None appeared on behalf of the assessee inspite of service of notice we decided to proceed exparte. The DR were heard at length. Case record carefully perused.

4. Briefly stated the facts of the case are that assessment in this case was completed on 31.03.2014 at an income of Rs.9,29,05,950/- against returned income of Rs.1,05,56,641/- after making addition of Rs. 20.59 lacs and Rs.8.02 crores on account of short term capital gain and long term capital gain respectively on sale of urban land.

5. Penalty proceedings were separately initiated. The AO was of the firm belief that the consideration received by the assessee on transfer of agricultural land were subjected to capital gain tax and as the assessee did not offer the gains in his return of income, the AO was convinced that penalty is leviable u/s. 271 (1) (c) of the Act for furnishing inaccurate particulars of income and accordingly levied penalty of Rs. 17179745/-.

6. Matter was strongly agitated before the CIT(A). It was strongly contended that when the assessee sold the impugned piece of agricultural land said land was beyond the distance of 8 KMS from the municipal limits and this was confirmed by the Tehsildar of Sohana. The CIT(A) called for remand report from the AO and the AO vide his report dated 25.01.2016 submitted that the Tehsildar, Sohna had certified the certificate issued by his office were authenticated.

7. After considering the facts and the submissions the CIT(A) observed as under :-

3.8 I have carefully considered the appellant's submissions. The additions in this case, on which penalty has been levied, were made on account of the fact that the Land sold by the appellant was within the distance of 8 Km. from the local limits of Municipal Corporation Gurgaon. The appellant had claimed that the same was beyond the distance of 8 Km. from the Municipal limit of Gurgaon and in this regard had contended that the claim was based on distance certificates' issued by the Local Tehsildar. The appellant has further contended that although, initially, the land sold by the appellant was beyond the distance of 8 Km. from the Municipal limit of Gurgaon but subsequently, due to change of local limits of Gurgaon vide notifications dated 02/06/2008 and 20/03/2010 by which the Municipal limits of Gurgaon were extended, the land under

reference came within the distance of 8 Km. from the Municipal limits. The appellant has contended that this fact was not in the notice of the appellant. The appellant has also filed certificates from the Tehsildar, Sohna wherein it has been mentioned that prior to the revised notifications dated 02/06/2008 and 20/03/2010, the lands under reference, sold by the appellant on which capital gains have been computed were at a distance of more than 10 km from the municipal limit of Gurgaon. Copies of the confirmations from the Tehsildar in this regard are enclosed as Annexure A-1, A-2 and A-3.

3.9 It is evident from the facts discussed above that the lands under reference sold by the appellant on which capital gains have been computed and on which penalty has been levied were situated at a distance of more than 10 Km from the Municipal limits of Gurgaon prior to the notification No. 18/1/19/2008-3CL dated 02/06/2008 and it was only after the revised notification issued by the municipal corporation that the distance came to be less than 8 Km from the municipal limits. The issue whether the distance of the area y/here the subject land on which capital gains are to be computed was located has to be considered on the date of CBDT notification No. 9447 dated 06/01/1994 or on the date of sale is a debatable issue.”

8. After making the above mentioned observations and drawing support from several judicial decisions the CIT(A) deleted the penalty levied by the AO.

9. Before us the DR strongly supported the findings of the AO and lead relevant findings in the assessment order and drew our attention to the notifications issued showing that the distance were less than 8KMS.

10. We have carefully perused the orders of the authorities below. It is an undisputed fact that the distance of the land sold on the date of CBDT notification No.9447 dated 06.01.1994 was more than 8 KMS. It is equally true that on the date of sale the said distance was less than 8 KMS. We are of the considered view that the chargeability of capital gain tax under such circumstances is a debatable issue. We further find that the appellant claim is well supported by the certificate of the Tehsildar, Sohna which was also confirmed by the AO in his remand report.

11. The Hon'ble Supreme Court in the case of Reliance Petro Chemicals Limited the 322 ITR 158 has held that merely making an incorrect claim would not tantamount to furnishing of inaccurate particulars unless it was established that appellant had acted with malafide intention.

12. Considering the facts of the case in totality in the light of certificates of the Tehsildar, Sohna we are of the considered view that the CIT(A) has rightly deleted the penalty levied u/s. 271 (1) (c) of the Act and calls for no interference.

13. In the result, the appeal filed by the revenue is dismissed.

14. Decision announced in the open court in the presence of both the representatives on 19.07.2021.

Sd/-

(K.NARASIMHA CHARY)
JUDICIAL MEMBER

NEHA

Date:-19.07.2021

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	19.07.2021
Date on which the typed draft is placed before the dictating Member	19.07.2021
Date on which the typed draft is placed before the Other member	19.07.2021
Date on which the approved draft comes to the Sr.PS/PS	19.07.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	19.07.2021
Date on which the fair order comes back to the Sr. PS/ PS	19.07.2021
Date on which the final order is uploaded on the website of ITAT	19.07.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	