

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “B” BENCH**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)**

[Through Virtual Court]

**ITA. Nos: 166 & 167/Ahd/2019  
(Assessment Years: 2013-14)**

<b>Pradipsinh Karansinh Thakor 21, Shreenath Sanidhya, Beside to Shreenath Bungalow, New Alkapuri, Gotri, Vaoddara</b>		<b>DCIT Circle-1(2), Vadodara</b>
<b>PAN No. APRPT1218B</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**Appellant by : Shri N. M. Darji, A.R.  
Respondent by : Shri R. R. Makwana, Sr. D.R.**

**(आदेश)/ORDER**

Date of hearing : 10-06-2021  
Date of Pronouncement : 30-07-2021

**PER MAHAVIR PRASAD, J.M.**

1. These two appeals have been filed by the Assessee are directed against the order of the Commissioner of Income Tax (‘hereinafter called CIT(A)’) order no. CIT(A)-5 Vadodara/10184/2017-18 order dated 20/12/2018 arising out of

assessment order dated 05/12/2016. Assessee has taken following grounds of appeal:

- 1. The Ld CIT(A) has erred in law and in facts, in confirming the penalty u/s 271(1) (C) of the Act Rs. 4,77,240/- imposed by the Ld Assessing officer though the case of the appellant is not covered by the Explanation 3 to section 271(1)(C) of the Act and the appellant was under bona fide belief that Capital Gain earned on sale of agricultural land was not chargeable to tax as it was not Capital Assets as per section 2(14)(iii) of the Act supported by authentic evidence and case laws produced before the Income Tax Authority*
2. Brief facts of the case are that assessee is an agriculturist having agricultural land and his income is from agriculture and bank interest only. The assessee failed to file its return during the relevant period. Thereafter, Ld. A.O issued a notice u/s. 148 that assessee has sold immovable property on 05.04.2012 for consideration of Rs. 68,16,700/-. In compliance to the notice, assessee filed return of income declaring taxable income at Rs. 25,66,700/- and income of Rs. 1,08,552/- for other sources.
3. Assessee's contention was that his sold land was not a capital asset as the land was situated at the distance on 8 km. from the Vadodara city and Urban Development authority issued a letter on 29.03.2012 and competent authority has said that it is still exist in agriculture zone and air polluted area. However, there is no any TP scheme in this area and as per the last census, the population of village Sherkhi where land is situated is less than 10,000 and it is also having Gram Panchayat functional. But Ld. A.O. did not agree with the contention of the assessee and made addition and also imposed penalty u/s. 271(1)(c).
4. Thereafter, assessee preferred first statutory appeal before the Ld. CIT(A) but to no avail.

5. Now question before us is whether assessee bona fide believes that sold land is not a capital asset as per Income Tax act. In such case, penalty can be levied or not.
6. In the case of Chand Prabha Jain vs. ACIT (2012) 34 CCH 0125 ITAT Delhi has held that assessee is claiming exemption from capital gain on the basis that the impugned land is not a 'capital asset.' Therefore, initial burden is on the assessee to prove that the land in fact is not capital asset. To fall outside the scope of "capital asset" the land has to fulfil the condition as discussed in section 2(14)(iii).
7. In the present case, assessee has produced a certificate issued by the Urban Development Department as well as certificate from Gram Sabha and a letter from Revenue Department wherein status of land has been shown as agricultural land.
8. In the matter of ITO Vs. H.A. Sodhan 04 CCH 0393 Ahd-Tribunal, wherein it is held that appellant could reasonably entertain a bona fide belief that the land in question was agricultural in character and the sale thereof did not attract capital gains. The burden cast upon the appellant by the Explanation to Section 271(1)(c) can be said to have been discharged by the appellant.
9. The Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 holding in para 9, 10 & 12 from the gist as under:

*Reading the words "inaccurate" and "particulars" in conjunction, they must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. In this case, there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under s. 271(1)(c). A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made*

*in the return cannot amount to the inaccurate particulars. 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 attract the penalty under s. 271(l)(c). If the contention of the Revenue is accepted then in case of every return where the claim made is not accepted by AO for any reason, the assessee will invite penalty under s. 271(l)(c). That is clearly not the intendment of the legislature. The Tribunal, as well as, the CIT(A) and the High Court have correctly reached this conclusion. —Sree Krishna Electricals vs. State of Tamil Nadu & Anr. (2009) 23 VST 249 (SC) applied; Reliance Petroproducts (P) Ltd. (judgment dt. 23rd Oct., 2007 of the Gujarat High Court in Tax Appeal No. 1149 of 2007) affirmed.*

10. In view of the above said discussion, we allow appeal of the assessee and direct A.O. to delete the penalty.

11. Now we come to ITA No. 167/Ahd/2019 for 2013-14, the assessee has taken following grounds of appeal:

*1) The Ld CIT(A) has erred in law and in facts, in confirming the penalty u/s 271F of the Act Rs. 5,000/- imposed by the Ld Assessing officer though the appellant was under bona fide belief that Capital Gain earned on sale of agricultural land was not chargeable to tax as it was not Capital Assets as per section 2(14)(i) of the Act supported by authentic evidence and case laws produced before the Income Tax Authority.*

12. As we held in the connected appeal in ITA No. 166/Ahd/2019 that assessee was in bona fide belief that his sold land was an agricultural land and did not attract any capital gain and same was not within the definition of capital asset. Hence did not attract capital gain.

13. Thus, as we have granted relief to the assessee in the connected appeal in ITA No. 166/Ahd/2019, therefore, this appeal of the Assessee is also allowed.

14. In the result, both the appeals filed by the Assessee are allowed.

Order pronounced in Open Court on 30 - 07- 2021

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
Ahmedabad: Dated 30/07/2021

**Sd/-**  
**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad