

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : G : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.1764/Del/2017
Assessment Year: 2010-11

Shobha Sekhari,
448-451, Chinmin Farms,
Village Satbari,
Mehrauli,
New Delhi.

Vs ACIT,
Central Circle-15,
New Delhi.

PAN: AATPS1222M

(Appellant)

(Respondent)

Assessee by	:	Shri Shailesh Gupta, CA
Revenue by	:	Shri H.K. Chaudhary, CIT, DR
Date of Hearing	:	03.11.2021
Date of Pronouncement	:	03.11.2020

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 11th January, 2017 of the CIT(A)-26, New Delhi, relating to assessment years 2010-11.

2. Levy of penalty of Rs.46,03,531/- made by the AO u/s 271(1)(c) of the IT Act, 1961 and upheld by the CIT(A) is the only issued raised by the assessee in the grounds of appeal.

3. Facts of the case, in brief, are that the assessee is an individual. A search and seizure operation u/s 132 of the IT Act was carried out by the Investigation Wing of the Department on 11.11.2010 in Tinna Group of cases including the assessee. The AO completed the assessment u/s 153A/143(3) of the Act on 28th March, 2013, determining the total income of the assessee at Rs.2,28,60,948/- against the returned income of Rs.5,38,413/-. The addition was made on account of capital gain of Rs.2,23,03,125/- on transfer of a land measuring 39 bighas situated at Village Rojka Gujjar Distt. Sohna (Haryana). While doing so, the AO rejected the claim of this land as agricultural land on which an amount of Rs.29,410/- was shown as agricultural income. The assessee filed appeal before the CIT(A) which was dismissed by the CIT(A). The AO, thereafter, initiated penalty proceedings u/s 271(1)(c) of the IT Act. Rejecting the various explanations given by the assessee, the AO levied penalty of Rs.46,03,531/- u/s 271(1)(c) of the Act. In appeal, the ld.CIT(A) upheld the action of the AO.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The ld. counsel for the assessee, at the outset, filed a copy of the order of the Tribunal in the case of the assessee and other related parties, vide consolidated order dated 30th September, 2021 and submitted that the Tribunal at paras 44 and 45 of the order, has deleted the addition. He accordingly submitted that since the

quantum addition has already been deleted by the Tribunal, therefore, the penalty does not survive.

6. The ld. DR, on the other hand, fairly conceded that the Tribunal has deleted the addition made by the AO.

7. We have considered the rival arguments made by both the sides and perused the record. Since, admittedly, the quantum addition made by the AO has already been deleted by the Tribunal, therefore, the penalty does not survive. We, therefore, set aside the order of the CIT(A) and direct the AO to cancel the penalty levied by the AO.

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

The order was pronounced in the open court at the time of hearing itself, i.e., on 03.11.2021.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 03rd November, 2021.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi