

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 7548/Mum/2019
(Assessment Year 2011-12)

Mrs. Shailaja G Tandel
401, Chandan Residency
Plot No.33, Sector 44A,
Nerul West,
Navi Mumbai-400 706

Vs.

ITO Ward-4
Panvel Raigad
Navi Mumbai

(Appellant)

(Respondent)

PAN No. ACPPT6011K

Assessee by : Shri Prakash Pandit, AR
Revenue by : Shri Ajay Singh, DR

Date of hearing: 05.09.2022
Date of pronouncement : 05.09.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by assessee against the order passed by the Commissioner of Income-tax (Appeals)-5, [the learned CIT (A)] Pune, dated 4th October, 2019 for A.Y. 2011-12, wherein penalty levied by ITO, Ward-4, (the learned Assessing Officer) under Section 271(1)(c) of the Income-tax Act, 1961 (the Act) dated 24th March, 2017 of ₹26,57,402/-, is confirmed.
02. Briefly stated facts show that return of income was filed on 20th July, 2011 at ₹5,70,669/-. The assessment under Section 143(3) of the Act was concluded on 30th January, 2014 at a total income of ₹92,47,110/-. The addition on

account of short term capital gain of ₹ 85,82,500/- was made. Assessee also did not offer interest income amounting to ₹93,952/-. Therefore, the penalty notice under Section 274 rws 271(1) (C) of the Act was issued. In the assessment order, Id AO did not record any satisfaction with respect to which limb penalty proceedings are initiated. The Assessing Officer issued penalty notice stating twin charges i.e. concealment of income and furnishing of inaccurate particulars of income.

03. The addition was upheld by the learned CIT (A) as per order dated 24th March, 2015. Against that, appeal was filed before the coordinate Bench and co-ordinate Bench passed an order dated 31st December, 2018 in ITA No.3845/Mum/2015, wherein the appeal of the assessee was allowed. The co-ordinate Bench held that addition of short term capital gain made by the learned Assessing Officer is a long term capital gain and assessee is entitled to deduction under Section 54F of the Act.
04. Meanwhile, the learned Assessing Officer passed an order under Section 271 (1) (c) of the Act, as nobody attended before him, levying penalty of ₹26,57,402/- holding that assessee has concealed income from short term capital gain.
05. Assessee challenged the same before the learned CIT (A), who also confirmed the levy of penalty. Therefore, assessee is in appeal before us.



06. The learned Authorized Representative submitted that penalty notice has both the charges and none of the charge was struck off. It was stated that issue is squarely covered by the decision of Hon'ble Bombay High Court in case of Mohd. Farhan A. Shaikh vs. DCIT [2021] 125 taxmann.com 253 (Bombay) dated 11th March, 2021. It was stated that even from the assessment order the charge cannot be inferred. Therefore, the penalty is not leviable.
07. The learned Departmental Representative supported the order of the lower authorities.
08. We have carefully considered the rival contentions and perused the orders of the lower authorities. In the present case, the land of the assessee was compulsorily acquired in 1972 and against which a plot was to be allotted to the assessee. On 15th July, 2007, letter of allotment was issued to the assessee which was transferred by tripartite agreement on 23rd February, 2011, and assessee received a consideration of ₹86 lacs. This amount was considered by the learned Assessing Officer as short term capital gain. Assessee considered it as Long term capital gain and claimed exemption u/s 54F of The Act. On appeal before the ITAT same was considered as long term capital gain. On this sum along with bank interest penalty under Section 271(1)(c) of the Act was levied. There is no satisfaction in the assessment order but merely a direction to issue notice under Section 274 read with section 271(1)(c) of the Act. The notice under Section 274 of the



Act placed before us dated 30th January, 2014, The learned Assessing Officer did not strike off any of the twin charges. The penalty was levied on assessee for concealment of income. The case of the assessee is squarely covered by the decision of Hon'ble Bombay High Court in case of Mohd. Farhan A. Shaikh (supra), wherein the larger bench has held that a defect in notice by not striking off irrelevant matter would vitiate the penalty proceedings. Accordingly, respectfully following the decision of Hon'ble Bombay High Court, we reverse the findings of the lower authorities and quash the penalty order. Accordingly, the learned Assessing Officer is directed to delete the penalty levied under Section 271(1)(c) of the Act of ₹26,57,402/-.

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

Order pronounced in the open court on 05.09.2022.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 05.09.2022

Sudip Sarkar, Sr.PS

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.

BY ORDER,

True Copy//



Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai