

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 708/DEL/2018 [A.Y. 2010-11]

The I.T.O
Ward - 2(4)
New Delhi

Vs.

The New Vikas Co-op House
Building Society Ltd
546, Jagdish Colony
Ballabhgarh

PAN: AAAJT 1595 P

(Applicant)

(Respondent)

Assessee By : Shri Vijay Kumar Gupta, Adv

Department By : Ms. Kajal Singh, Sr. DR

Date of Hearing : 11.01.2023

Date of Pronouncement : 13.01.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A), Faridabad dated 29.11.2017 pertaining to Assessment Year
2010-11.

2. The solitary grievance of the Revenue is that the ld. CIT(A) deleted the penalty of Rs. 76,80,378/- u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] disregarding the fact on record that the matter on similar issues in the case of the assessee itself for Assessment Years 1999-2000 to 2003-04 is subjudice before the Hon'ble Punjab and Haryana High Court.

3. The roots for levy of penalty lie in the assessment order dated 13.02.2013 framed u/s 143(3) of the Act wherein it was found that the assessee had received enhanced compensation on land and interest on enhanced compensation amounting to Rs. 2,64,07,962/-.

4. The Assessing Officer noticed that the assessee had not offered enhanced compensation and interest thereon for tax, though at the same time, has given the following note in computation of income:

“During the present period i.e. A.Y. 2010-11 the present society received enhanced compensation of Rs. 1,97,03,406/- on account of compulsory acquisition of agricultural land by the Government of Haryana. The society also received interest on enhanced compensation to the amount of Rs.67,04,556/-. These receipts of the society are not taxable with the provisions of the Income Tax Act, 1961 because of the present society being a mutual concern as held by the Ld. CIT(A), Faridabad vide its orders dated

24.03.2008 in the cases of this very society relevant to the A. Ys. 1999-2000 to 2003-04. These orders of the Ld. CIT(A) have been confirmed as such by the Hon'ble IT AT, Delhi vide its orders dated 12.09.2008."

5. The Assessing Officer was of the firm belief that as per provisions of the Act, liability of capital gains tax arose and proceeded by making addition of enhanced compensation amounting to Rs. 1,97,03,406/- and interest on enhanced compensation amounting to Rs. 67,04,556/- and completed the assessment proceedings.

6. Quantum addition was sustained by the Tribunal. Penalty proceedings u/s 271(1)(c) of the Act were separately initiated and the assessee was show caused to explain as to why penalty should not be levied for concealment of income.

7. In its reply, the assessee strongly contended that these receipts are not taxable because the society being a mutual concern, as held by the ld. CIT(A), Faridabad, since 1999-2000 to 2003-04, which order of the ld. CIT(A) has been confirmed by the Tribunal, and, therefore, the society has not included the receipts and taxation of enhanced

compensation and interest thereon was highly debatable issue at the time of filing of the return. Therefore, no penalty should be levied.

8. Reply of the assessee did not find any favor with the Assessing Officer, who proceeded by computing penalty of Rs. 76,80,378/-.

9. The assessee carried the matter before the Id. CIT(A) and reiterated its contentions.

10. After considering the facts and submissions, the Id. CIT(A) was convinced that the assessee had duly disclosed interest income in its note with the return of income filed and further referred to the decision of the Tribunal dated 12.09.20108 wherein the Tribunal has held that enhanced compensation, interest thereon and bank interest income is not taxable at the time of filing of return of income for the year under consideration and went on to delete the penalty.

11, Before us, the Id. DR strongly relied upon the findings of the Assessing Officer and read the operative part of the penalty order.

12. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

13. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that in Assessment Years 1999-2000 to 2003-04, the Tribunal has decided three appeals vide order dated 13.02.2017 in favour of the assessee and against the Revenue and the appeals of two years, i.e., 2002-03 and 2003-04 are still pending.

14. Pursuant to the decision of the Tribunal, the assessee was under a bonafide belief that the impugned income is not taxable and hence did not include in its return of income. Subsequently, with change in law and the decision of the Hon'ble Supreme Court, the said amount became taxable but it cannot be said that the assessee has willfully concealed its income, since the issue was highly debatable at time of filing of return of income, therefore, we do not find this to be a fit case for levy of penalty u/s 271(1)(c) of the Act and, therefore, we decline to interfere with the findings of the ld. CIT(A).

15. In the result, the appeal of the Revenue in ITA No. 708/DEL/2018 is dismissed.

The order is pronounced in the open court on 13.01.2023.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 13th January, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

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