

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT "SMC" BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

**आ.अ.सं./ITA No.92/SRT/2023** (AY 2012-13)

(Hearing in Physical Court)

Sudhir Bhupendra Desai 106, 'Shriyam', Nehru Nagar, Ichhanath, SVR College, S.O., Surat-395007 <b>PAN No: AXDPD 7887 Q</b>	Vs	Income Tax Officer, (Int. Tax), Room No.107, 1 <sup>st</sup> Floor, Income-tax Office, Surat Anavil Business Centre, Adajan Hazira Road, Adajan, Surat-395007
<b>अपीलार्थी/</b> Appellant		<b>प्रत्यर्थी /</b> Respondent

निर्धारिती की ओर से /Assessee by	Shri Hiren R. Vepari, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
Date of filing appeal	03.02.2023
सुनवाई की तारीख/Date of hearing	23.03.2023
उद्घोषणा की तारीख/Date of pronouncement	30 .03.2023

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of Ld. Commissioner of Income-tax (Appeals)-13, Ahmedabad [for short to as "Ld. CIT(A)"] dated 16.01.2023 for assessment year 2012-13, which in turn arises out against the penalty levied by Assessing Officer/ Income tax Officer (INT.Tax) Surat, under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 07.09.2021. The assessee has raised the following grounds of appeal:-

*"(1) On the facts of the case, the learned CIT(A) was not justified in confirming penalty u/s 271(1)(c) of the Act.*

*(2) The learned CIT(A) ought to have appreciated the circumstances of the appellant of he being Non-resident Indian and his bona fides.*

*4. The appellant craves leave to add, alter or vary any of the grounds of appeal.”*

2. Brief facts of the case are that assessee is a Non-Resident Indian (NRI) and acquired permanent Citizenship of Canada. The case of assessee was reopened on the basis of information that assessee made deposit of Rs.1.17 crores and also got interest income of Rs. 82,944/-. The assessee has not filed his return of income for the subject-assessment year, i.e., assessment year 2012-13. The Assessing Officer issued notice under section 148 of the Act on 29.03.2019. The assessing officer noted that, in response to such notice, the assessee filed his return of income, but it was not e-verified and return was treated as “invalid”. The assessee and his brother sold immovable property for a consideration of Rs.95 lakhs. The assessee having his share of 50% thereby Rs.47.50 lakh was received. The Assessing Officer after serving statutory notices, completed assessment and made addition of Rs.16,26,878/- on account of Long Term Capital Gains (LTCG) on sale of immovable property. The Assessing Officer also made

addition of Rs. 42,110/- on account of interest income earned by assessee from Surat Mercantile Co-Operative Bank Ltd., in his assessment order dated 23.12.2019.

3. The Assessing Officer also initiated penalty under section 271(1)(c) of the Act. The notice under section 274 r.w.s. 271(1)(c) of the Act was issued to the assessee on 10.02.2021. In response to such show cause notice, assessee filed his reply dated 27.04.2021 and relevant portion of assessee's reply is recorded by Assessing Officer in para-4.1 of his penalty order. The assessee in his reply submitted that assessee offered capital gains and also paid tax of Rs.9.60 lakh during the assessment proceedings by self-assessment and communicated before the Assessing Officer, which clearly showed that assessee has no *mala fide* intention to avoid pay tax. The reply of assessee was not accepted by Assessing Officer. Thereafter Assessing Officer levied penalty of Rs. 3,35,137/- being @ 100% of tax sought to be evaded with regard to concealment of income of LTCG vide penalty order dated 07.09.2021.
4. Aggrieved by the penalty order, the assessee filed appeal before Ld. CIT(A). Before Ld. CIT(A) the assessee filed

detailed written submission and the submission of assessee was recorded in para-4.1 of the order of Ld. CIT(A). The assessee in his submission, stated that assessee is an NRI, who is a Canadian Citizen. This is first matter of assessee before the Income Tax Department. The assessee was co-owners of immovable property, which was sold during the year under consideration. The sale deed was executed through his sister, who was authorized by way of Power of Attorney in favour of assessee and such sale consideration was deposited in fixed deposit. The assessee was unaware of Indian Income Tax procedure that the implication of the above sale of asset under *bona fide* belief that no tax / capital gains was payable as he is an NRI status. However, on consulting the tax advisor, the assessee paid due tax alongwith interest. The assessee has no *mala fide* intention to evade the tax or concealed his income though it was due to *bona fide* ignorance of Indian Tax system. The assessee also relied upon the decision of Hon'ble Apex Court in the case of K. P. Madhusudan 246 ITR 218 (SC), wherein it was held that before penalty can be imposed, the entirety of circumstances must reasonably point to the conclusion that

the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars. Further, assessee also relied on the decision of Hon'ble Apex Court in the case of Sri T. Ashok Pai Vs CIT (101 Taxman 340-SC) and in the case of Dilip N Shroff Vs JCIT (161 Taxman 218 SC).

5. The Ld. CIT(A) after considering the submission of assessee upheld the penalty levied by Assessing Officer by referring the decision of Hon'ble Delhi High Court in the case of CIT vs. Zoom Communication (2010) 327 ITR 510 (Del). The Ld. CIT(A) also held that assessee cannot take plea that he was unaware of tax law as a simple query from anyone or on internet would have revealed that he is liable to pay tax on gain on sale of immovable property. The ignorance of law is an untenable plea. Further aggrieved, the assessee filed present appeal before the Tribunal.

6. I have heard the submission of Ld. Authorized Representative (Ld. AR) for the assessee and learned Senior Departmental Representative (ld. Sr DR) for the Revenue. The Ld. AR for the assessee submits that during the relevant

period under consideration, the assessee sold his ancestral property along with his brother on 24.10.2011 and assessee was having  $\frac{1}{2}$  share in the said ancestral property thereby out of total sale consideration of Rs.87.50 lakh. The assessee received a sum of Rs.47.50 lakh. The Ld. AR for the assessee submits that sale deed was executed by his sister (Geetaben Kapadia) who was holding Power of Attorney and was managing all the affairs on behalf of assessee in India. The sale consideration realized on sale of such ancestral property was also put by sister of assessee in assessee's bank account in terms of fixed deposit. The sister of assessee has also confirmed this fact by sworn affidavit. The assessee neither in earlier year nor in subsequent year has filed his return of income as no income earned arise or accrued to assessee in India. The assessee was not aware about tax on capital gains earned on transfer of such property. On realizing such fact, the assessee got the valuation of asset done as on 01.04.1981 through registered valuer and worked out the capital gains and paid due tax before completion of assessment. The intention of assessee was never either to evade the tax or to conceal the income

on sale of ancestral property. The Ld. AR for the assessee submits that in response to show cause notice, the assessee filed reply before Assessing Officer vide reply dated 27.04.2021. In the reply, the assessee has shown sufficient caused for not levying penalty. The reply of assessee was not accepted by the Assessing Officer who levied penalty of Rs.3,35,137/- being 100% of tax sought to be evaded. To support his submission, Ld. R for the assessee relied upon the following case law:

- CIT vs. Ashok Taker [2008] 170 Taxman 471 (Del)
- CIT vs. Rajnish Nath Aggarwal IT Appeal No.383 of 207 (2008) 8 DTR (P&H) 253
- JCIT vs. Signature (2005) 143 TAXMAN 28 (Del)(MAG)
- DCIT vs. Chirag Metal Rolling Mills Ltd. [2007] 162 TAXMAN 317 (MP)
- CIT vs. Sunil Chand Gupta [2013] 40 taxmann.com 307 (All)

7. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities. The Ld. Sr-DR for the Revenue submits that ignorance of law is not excuse and assessee is an educated person and cannot take the plea that he was not aware about tax implication on surplus earned on sale of his ancestral property.

8. I have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. I have also deliberated on the case law cited by Ld. AR for the assessee. I find that there is no dispute that assessee is an NRI and staying in Canada. The case of assessee was reopened on the basis of information that assessee deposited huge amount in his bank account and also earned interest income, though no return of income was filed by assessee. After reopening, the assessment was completed on 23.12.2019, wherein addition of LTCG of Rs.16,26,878/- was made. I find that Assessing Officer levied penalty under section 271(1)(c) of the Act of Rs.3,35,137/-. The Ld. CIT(A) also confirmed the penalty by following the decisions of Zoom Communication (supra). Before me, Ld. AR for the assessee vehemently relied on various case law submitted that assessee on coming to know about taxable of capital gains offered the capital gains for taxation and paid due tax before completion of assessment and relied various case law as recorded above. I find merit in the submission of Ld. AR of the assessee that

assessee during assessment proceedings offered the LTCG of Rs. 16,26,878/- and paid due tax.

9. I find that Hon'ble Delhi High Court in the case of Ashok Taker (supra) held that during assessment proceedings, when the assessee surrendered certain amount for taxation and submitted that same was done in order to buy peace. The Assessing Officer added such income and initiated penalty under section 271(1)(c) of the Act. On first appeal before the penalty was deleted. The order of Id CIT(A) was confirmed by Tribunal. On further appeal before Hon'ble High Court it was held that that Assessing Officer failed to bring on record any other material to show that conduct of the assessee was such that it warranted penalty. Thus, there was no error in the view taken by the Ld. CIT(A) as well as Tribunal.
10. Further, Hon'ble Punjab & Haryana High Court in the case of Rajnish Nath Aggarwal (supra) also held that when assessee surrender income on account of uncorroborated freight charges debited in profit & loss account to buy peace of mind and further litigation, there was no question of concealment of income and furnishing of inaccurate

particulars thereof in deleting the penalty by Tribunal no error was committed.

11. Further, Hon'ble Allahabad High Court in the case of Sunil Chand Gupta (supra), held that where assessee after filing its return declaring income from sale of shares taxable as long term capital gain, intimated DDIT (Inv.) later on that amount disclosed earlier as long term capital gain was in fact taxable as '*income from other sources*' and, accordingly, paid differential tax on said amount before issuance of notice under section 148, said conduct of assessee being *bona fide* in nature, impugned penalty order passed under section 271(1)(c) on account of concealment of particulars of income was to be set aside.
12. The ratio of decision of Delhi High Court in Zoom Communication (supra) is at little variance. In the said case, during assessment it was noted that in Schedule 9, relating to Administration and other Expenses, forming part of Profit & Loss Account, a sum of Rs. 1,21,49,861 had been debited under the head "Equipment written off". It was stated by the assessee that due to oversight, this amount was not added back in computation of income and the same ought to have

been adjusted in the block of assets. The aforesaid amount was added back to the income of the assessee, with its consent. It was further noticed that another sum of Rs. 1 lakh had been debited under the head "Income-tax paid", in the above-referred Schedule relating to Administration and other Expenses. The assessee claimed that due to oversight, this amount was not added back in the computation of income. Hence, the Assessing Officer added this amount also to the income of the assessee. Penalty proceedings were also initiated against the assessee. During penalty proceedings, the assessee claimed that it had committed a *bona fide* mistake and all the facts material to the computation were disclosed. The Assessing Officer was of the view that there was no difference of opinion as regards disallowance of these expenses and the incorrect computation given by the assessee was an act of paying less tax than what was due from it. He was of the view that the assessee was a big company, assisted by a team of Tax Auditors and, therefore, it was a case of concealment of income as well as of furnishing wrong particulars for computation of income. The CIT (A) was of the view that

assessee had committed serious laxity, while filing computation of income and the mistake committed by it could not be said to be *bona fide*. The CIT(A) therefore, upheld the penalty imposed upon the assessee. The Tribunal deleted the penalty, however on reference before High Court, the question referred before High Court was answered in favour of revenue.

13. However, the facts in the case in hand is at variance. The assessee right from the attending the hearing before assessing officer took the plea that he has already paid the due tax with interest, on the capital gain earned on the sale of his ancestral property. In view of the aforesaid factual and legal position, I find merit in the submission of Ld. AR for the assessee that there was no *mala fide* intention of assessee to evade the tax of conceal part of his income and that assessee before completion of assessment, he accepted such fact and paid due tax. Considering the peculiar facts of the case, I direct the Assessing Officer to delete the entire penalty levied under section 271(1)(c) of the Act. In the result, the grounds of appeal raised by the assessee are allowed.

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

Order pronounced on 30 March, 2023 in the open court.

**Sd/-**  
**(PAWAN SINGH)**  
[न्यायिक सदस्य JUDICIAL MEMBER]

सूत/Surat, Dated: 30/03/2023  
*Dkp. Out Sourcing Sr.P.S*

Copy to:

1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

By order

// True Copy //

Senior Private Secretary/  
Secretary/Assistant Registrar, Private  
Surat ITAT,