

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 39/SRT/2022 (AY: 2011-12)
(Hearing in Physical Court)

Prakashsinh Thakor, 53, Pratap Nagar, Delad, Olpad, Surat-394540 PAN: ALHPT 9125 B	Vs.	A.C.I.T., Circle2(2), Surat.
APPELLANT		RESPONDEDNT

Assessee by	Shri Sapnesh Sheth, CA
Department by	Shri Vinod Kumar, Sr. DR
Date of hearing	08/06/2023
Date of pronouncement	08/06/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals) [in short the Id. CIT(A)] dated 24/12/2021 for the Assessment Year (AY) 2011-12. The assessee has raised following grounds of appeal:-

- “1. On the facts and circumstances of the case as well as law on the subject, the Id. CIT(A),NFAC has erred in partly confirming the action of the assessing officer in imposing penalty on the total income of the assessee including income declared in the return of income filed in response to the notice u/s 148 of the Act.
2. On the facts and circumstances of the case as well as law on the subject, the Id. CIT(A),NFAC has erred in partly confirming the action of the assessing officer in imposing penalty of Rs. 6,18,025/- u/s 271(1)(c) of the I.T. Act, 1961.
3. On the facts and circumstances of the case as well as law on the subject, the Id. CIT(A),NFAC has erred in confirming the imposition of penalty

assuming concealment of income for non-filing of original return u/s 139(1) of the Act.

4. *It is, therefore, prayed that penalty imposed by assessing officer and partly confirmed by Commissioner of Income Tax (Appeals), NFAC may please be deleted.*
5. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."*

2. Brief facts of the case are that the case of assessee was reopened on the basis of information that the assessee has sold immovable property of Rs. 90.00 lacs and no return of income for A.Y. 2011-12, was filed. The Assessing Officer after recording reasons of reopening, served notice under Section 148 of the Income Tax Act, 1961 (in short, the Act) dated 22/03/2018. In response to such notice, the assessee filed return of income on 23/04/2018 declaring income of Rs. 18,20,420/-. During the assessment, the Assessing Officer noted that the assessee alongwith his brother, sold agricultural land out of Survey No. 38, block No. 86, Moje Gam-Delad, Taluka Olpad, Surat on 29/10/2010. The assessee was having 1/2 share thereby in computation of income, the assessee has shown consideration of Rs. 45.00 lacs. The assessee computed capital gain on sale of such land. The assessee adopted value of land @ Rs. 50 per square meter as on 01/04/1981. The Assessing Officer referred the matter to the Departmental Valuation Officer (DVO) for its valuation. The DVO furnished his report and adopted value of land @ Rs. 25 per square meter as on 01/04/1981. The Assessing Officer accordingly made addition of difference between the value adopted by the assessee vis a

vis the value suggested by DVO and made addition in the capital gain of Rs. 13,39,700/- and initiated penalty under Section 271(1)(c) of the Act. The Assessing Officer before passing the penalty order, issued show cause notice vide notice dated 08/05/2019. The assessee vide his reply dated 10/05/2019 submitted that there is no clear charge in the show cause notice about nature of default by the assessee for initiation of penalty. The reply of assessee was not accepted. The Assessing Officer reported that the assessee was having taxable income and has not filed return of income, return of income was filed only in response to notice under Section 148 of the Act. The indexed cost of acquisition provided by assessee of Rs. 7,53,750/- was @ Rs. 50/- per square meter as on 01.03.1981. The DVO assessed it at Rs. 37,67,900/- @ Rs. 25/- per square meter as on 01.04.1981 which is half of the value claimed (shown) by assessee. Notice under Section 271(1)(c) of the Act was separately issued for furnishing inaccurate particulars of income. The difference cost of acquisition between the assessee and the department amount to inaccurate particulars of income. The objection of assessee is accepted as it is only difference of information, however, the undisclosed long term capital gain is clearly falls under concealment of income. The Assessing Officer accordingly levied penalty @ 200% of tax sought to be evaded on the capital gain thereby levied penalty of Rs. 12,36,050/- vide order dated 26/09/2019.

3. Aggrieved by the order of penalty, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed written submissions. In the submission, the assessee besides the other submission, submitted that the replacement of fair market value as on 01/04/1981 for the purpose of calculation of capital gain is the provision to replace actual cost of acquisition with and unreal/artificial/deemed value, thus, the penalty not leviable when addition/disallowance is under deeming provision as has been held by Mumbai Tribunal in Renu Hingorani Vs ACIT ITA No. 2210/Mum/2010. Similar view was expressed by the Hon'ble Kolkata High Court in Madan Theatre Ltd. in ITA No. 62/2013 dated 14/05/2013. The assessee also objected against imposing penalty @ 200% being highly unreasonable.
4. The Id. CIT(A) after considering the submission of assessee upheld the action of Assessing Officer in holding the assessee guilty of concealment of income. However, the Id. CIT(A) restricted the quantum of penalty @ 100% of tax sought to be evaded. Further aggrieved, the assessee has filed present appeal before the Tribunal.
5. We have heard the submissions of learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue and perused the record carefully. The Id. AR of the assessee submits that the assessee is engaged in agricultural activities in the village and he sold agricultural land situated in a rural

area which is more than 8 KM beyond the Municipal limits and was not a capital asset within the definition of section 2(14)(iii). Though, the assessee in response to notice under Section 148 of the Act filed return of income declaring income of Rs. 18,20,241/-. The assessee never filed return of income prior to filing return in response to notice under Section 148 of the Act as the assessee was not having taxable income. The co-owner of land filed his return of income by taking cost of acquisition @ Rs. 50/- per square meter and offered capital gain and as per the information of assessee, his return of income, though, selected for scrutiny but no variation in the return of income was made. The assessee while filing return of income in response to notice under Section 148 computed capital gain by adopting market value of land as on 01/04/1981 @ Rs. 50/- per square meter. During the assessment, the valuation was referred to DVO, who was adopted/suggested the market value of land as on 01/04/1981 @ Rs. 25/- per square meter. The Assessing Officer accordingly recomputed the capital gain on the basis of value of land suggested by the DVO.

6. The Id. AR of the assessee submits that the addition was made only because of difference in estimation of value by assessee on the basis of report of government registered valuer vis a vis the report of DVO. Both the reports were based on some estimation of value as on 01/04/1981, the value suggested by the registered government valuer as well as value

suggested by DVO could be basis for making addition in the quantum assessment. However, both the reports were based on their fair estimation which could certainly be not a basis for levying penalty under Section 271(1)(c) of the Act. The assessee while filing return of income has neither concealed any particulars of income nor furnished inaccurate particulars thereof. The addition of capital gain is based on difference of opinion between the two expert reports on the issue of valuation of land. Thus, no penalty is leviable on the facts of the present case.

7. On the other hand, the Id. Sr. DR for the revenue supported the orders of lower authorities. The Id. Sr. DR for the revenue submits that all the submissions of assessee was considered by the Id. CIT(A) while granting partial relief to the assessee. Had the case of assessee was not reopened under Section 147, the income of assessee/capital gain therein escaped assessment? Thus, it is a fit case for levy of penalty.
8. In short rejoinder, the Id. AR of the assessee submits that though the land sold by assessee was purely a rural agricultural land, yet under legal advice, the assessee offered capital gain while filing return in response to notice under Section 148 of the Act. The basis of penalty is the particulars mentioned in the return of income, in the return of income, there is no concealment for fact or furnishing inaccurate particulars rather the addition was based on two different valuation report by two different experts.

9. We have considered the submissions of both the parties and perused the record carefully. In our view, a very limited issue is involved in the present appeal. The admitted fact is that the assessee while computing capital gain, adopted the value of land @ Rs. 50/- per square meter, however, on reference to DVO, it was estimated @ Rs. 25 per square meter as on 01.04.1981. The reports of both the experts is based on their estimation, no doubt depending upon certain factors affecting the value of land. However, the facts remained the same that the valuation is an estimation fair or otherwise, thus, in our view, no penalty is leviable on difference in value by two different experts. Therefore, we direct the Assessing Officer to delete the penalty.

10. In the result, this appeal of assessee is allowed.

Order pronounced on 08/06/2023 in open court.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 08/06/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. Pr.CIT
4. CIT
5. DR
6. Guard File

By Order

Sr. Private Secretary, ITAT Surat