

आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.558/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2016-17)

Ms. Kannappan Vijayalakshmi 183/1, Police Kandasamy Street, Olympus Ramanathapuram, Coimbatore-641 001.	बनम / Vs.	ITO Non-Corporate Ward-1(5), Coimbatore.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AMVPV-7345-N		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri R.Vijayaraghavan (Advocate)- Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri P. Sajit Kumar (JCIT)- Ld. Sr. DR

सुनवाईकी तारीख/ Date of Hearing	:	04-07-2023
घोषणाकी तारीख / Date of Pronouncement	:	26-07-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aggrieved by confirmation of penalty u/s 270A for Rs.4.12 Lacs for Assessment Year (AY) 2016-17, the assessee is in further appeal before us. The impugned order has been passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] on 12-05-2022 in the matter of impugned penalty levied by Ld. Assessing Officer [AO] u/s. 270A of the Act vide order dated 29-12-2021. The assessment has been framed u/s 147 vide order dated 10-09-2021.

Having heard rival submissions and after perusal of case records, the appeal is disposed-off as under.

2. During the course of assessment proceeding, Ld. AO perused the computation of income and noted that the assessee computed Long Term Capital Gains (LTCG) after claiming deduction of Rs.5 Lacs each for share of daughter and son. It transpired that the property under consideration was purchased by late husband of the assessee who expired in the year 2009 intestate, The entire investment was made by the husband, however, the property was registered in the name of wife assessee. The Ld. AO disputed the deduction of Rs.5 Lacs claimed by the assessee for each of the son and daughter. The Ld. AO held that registration was executed in the hands of the assessee and therefore, sale consideration could not be split in three parts as contended by the assessee, Therefore, the deduction of Rs.10 Lacs was denied and LTCG were re-computed which have been accepted by the assessee. However, Ld. AO initiated penalty u/s 270A for mis-reporting of income.

3. During penalty proceedings, the assessee submitted that her husband died intestate leaving behind the assessee, son and a daughter. The assessee fully declared the long term capital gains and claimed applicable deduction and also claimed a part of the amount belonging to the son and daughter arising on account of their share as per Hindu Succession Act due to intestate death of her husband. This deduction was not allowed by Ld. AO but there was no difference in the gross consideration from sale of property. The amount of Rs.10 Lacs was paid to the son and daughter which was to be considered as diverted at source. However, there was no under reporting of income but

only a disallowance of certain claim made by the assessee. However, Ld. AO held that the assessee committed default u/s 270A(9)(a) which provide that misreporting of income shall include misrepresentation or suppression of facts. Accordingly, Ld. AO imposed penalty of Rs.4.12 Lacs. The Ld. First appellate authority confirmed the same against which the assessee is in further appeal before us.

4. The undisputed facts that emerge are that the assessee's husband purchased a property from his own funds. However, the property was purchased in the name of the assessee who do not have any independent sources of income. The husband died intestate leaving behind the assessee, a son and a daughter. The assessee has sold the said property and declared full sale consideration in the computation of income. Apparently, the assessee has paid a sum of Rs.5 Lacs each to son and a daughter to settle the respective claim in the said property. The sum so paid was claimed as deduction which was denied by Ld. AO. The assessee accepted the same and paid due taxes thereupon. However, Ld. AO imposed impugned penalty by holding that there was misrepresentation or suppression of facts. However, on the given facts, it could not be said that the assessee misrepresented or suppressed any material facts, All the computations were disclosed in the return of income and the same was furnished to Ld. AO also during the course of assessment proceedings. The assessee's claim that the amount so paid was to be considered as sum paid towards perfecting the title could not be said to be without any basis. Merely because the claim so made by the assessee was not accepted would not lead to automatic levy of penalty. It is settled law that levy of penalty is not automatic. To fall

under, 270A(9)(a), essentially there has to be misrepresentation of suppression of facts. The same, in our considered opinion, was not a case here and it was not a fit case for imposition of penalty. Therefore, we delete the impugned penalty.

5. The appeal stand allowed.

Order pronounced on 26th July, 2023

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 26-07-2023
DS

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF