

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 03/Srt/2023 (Assessment Year 2011-12)

*(Physical hearing)*

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| Vijaybhan Singh Rajput,<br>Plot No. 131/3, Near Shrisati tex<br>Prints, GIDC, Pandesara, Surat.<br><b>PAN No. ABXPR 3970 L</b> | Vs. | I.T.O.,<br>Ward-2(3)(4),<br>Surat. |
| Appellant/ assessee  |     | Respondent/ revenue                |

|                               |                          |
|-------------------------------|--------------------------|
| Assessee represented by       | Shri Rajesh Shah, C.A.   |
| Department represented by     | Shri Vinod Kumar, Sr. Dr |
| Date of Institution of Appeal | 02/01/2023               |
| Date of hearing               | 12/07/2023               |
| Date of pronouncement         | 28/07/2023               |

**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 National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 16/03/2021 for the Assessment Year (AY) 2011-12. The assessee has raised following grounds of appeal:

*"1. The Id. AO has erred in levying penalty and Id. CIT(A) has erred in confirming the penalty u/s 271(1)(c) of the I.T. Act.*

*2. The appellant reserves the right to add, alter, amend or withdraw any grounds of appeal."*

2. Brief facts of the case are that the assessee filed his return of income for A.Y. 2011-12 on 22/09/2011 declaring income of Rs. 5,29,550/-. Subsequently, the case of assessee was reopened by issuing notice under Section 148 of the Income Tax Act, 1961 (in short, the Act) on

06/02/2014. The case of assessee was reopened on the basis of information that the assessee had entered into property transaction and the capital gain earned on sale of such asset/property as escaped assessment. The assessment was completed under Section 143(3) r.w.s. 147 of the Act on 29/01/2015. The assessing officer while passing the assessment order held that the assessee has sold the land admeasuring 1276 square meter wherein the assessee was owner of 28% with Shri Umeshsingh Lallusingh Rajput. The assessee has shown total sale consideration of Rs. 56.00 lacs, however, the Stamp Valuation Authority valued the same at Rs. 1,70,04,082/-. The assessee was having 28% share, accordingly, the Assessing Officer made addition of Rs. 46,76,143/-. The Assessing Officer made addition of Rs. 46,76,143/- on account of addition under Section 50C of the Act and also made addition of Rs. 1.20 lacs on account of low household withdrawal. The Assessing Officer initiated penalty for furnishing inaccurate particulars. On appeal against the addition in quantum assessment, the assessee was allowed part relief on addition of household expenses and other addition under section 50C was upheld. After receipt of order of Id. CIT(A), the Assessing Officer levied penalty by taking a view that the assessee was given show cause notice dated 09/02/2017. No reply was furnished by assessee and it is a fit case for levy of penalty for furnishing inaccurate particulars. The Assessing Officer held that the assessee furnished inaccurate particulars to the extent of Rs. 46,76,143/- by understating

the land consideration as well as for making claim of exemption under Section 54F of the Act. The assessee levied penalty of Rs. 9,30,325/- being 100% of tax sought to be evaded vide order dated 31/03/2017.

3. Aggrieved by the penalty, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed written submission and relied on various case laws. The assessee in its submission submitted that addition in the quantum assessment was made under Section 50C which is a deeming provision which empowers the Assessing Officer to make the addition of difference of value declared and the deemed sale consideration as has been adopted by Stamp Valuation Authority for the purpose of registration of document. Such deeming fiction cannot be applied for levying penalty under Section 271(1)(c) of the Act. Addition was made only on account of difference of opinion about the value of sale consideration as well as value of asset considered by Stamp Valuation Authority.
4. The Id. CIT(A) after considering the submission of assessee upheld the penalty by holding that the Stamp Valuation Authority has valued the property at Rs. 1.70 core, however, the Departmental Valuation Officer (DVO) has valued the property at the rate of Rs. 1.66 crore. The Id. CIT(A) was of the view that both the amounts are more or less the equal amount. The Id. CIT(A) further held that despite knowing the statutory provision of Section 50C, the assessee has not disclosed any particular in the return of income and not accepting the deeming sale

consideration as adopted by Stamp Valuation Authority for determining the capital gain. The assessee also made submission that he was engaged in the business of land trading for which he has no material evidence, thus, it is a fit case for levying penalty for furnishing inaccurate particulars of income. Further aggrieved, the assessee has filed present appeal before the Tribunal.

5. I have heard the submissions of the learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue. The Id. AR of the assessee submits that a very short controversy involved in the present appeal. The Assessing Officer made addition of Rs. 46,76,143/- under Section 50C of the Act on the basis of valuation adopted by Stamp Valuation Authority for the purpose of registration of transaction. Section 50C is deeming provision to tax the difference as capital gain where the consideration received as a result of transfer of capital asset, land or building or both is less than the value declared by assessee *vis a vis* the value adopted by Stamp Valuation Authority. No penalty is leviable on such addition added on the basis of deeming provision. The Id. AR of the assessee submits that on similar set off fact, Ahmedabad Tribunal in case of Kantibhai Mohanbhai Kheni Vs ACIT ITA No. 1831/Ahd/2014 dated 20/03/2017, deleted the similar penalty, thus, ground of appeal raised in the present appeal is squarely covered by the said order. The Id. AR of the assessee furnished the copy of decision of Tribunal.

6. On the other hand, the Id. Sr. DR for the revenue supported the orders of lower authorities.
7. I have considered the rival submission of both the parties and have perused the orders of the lower authorities carefully. I find that the addition made on account of difference of sale consideration shown by assessee *vis a vis* the value of asset determined by Stamp Valuation Authority at the time of registration of sale deed. The assessee has sold the land admeasuring 1276 square meter wherein the assessee was owner of 28% with Shri Umeshsingh Lallusingh Rajput. The assessee has shown total sale consideration of Rs. 56.00 lacs, however, the Stamp Valuation Authority valued the same at Rs. 1,70,04,082/-. The assessee was having 28% share, accordingly, the Assessing Officer made addition of Rs. 46,76,143/- and levied penalty @ 100% of tax sought to be evaded. The Id. CIT(A) upheld the penalty by holding that the assessee has not disclosed any particular regarding the value adopted by Stamp Valuation Officer for determining the capital gain.
8. We find that almost on similar set of facts, the Coordinate Bench of Tribunal while considering similar ground of appeal against levy of penalty, deleted the similar penalty by holding that in terms of deeming provision of Section 50C, higher sale consideration of property determined by DVO did not by itself Amount to furnishing inaccurate particulars of income so as to levy penalty under Section 271(1)(c) of the Act. Relevant part of decision is extracted below:

“5. We have heard both the sides and perused the material on record. On the perusal of the details it is observed that on the basis of the reference made to the valuation officer for valuation of property u/s 50C(2), the AO made an addition of Rs. 20130880/- u/s 50C of the act on the basis of valuation officer report, the assessing officer determined long term capital gain after reducing Rs. 67,58,003/- which the assessee has already disclosed as long term capital gain. On the analysis of the provisions of section 50C, we observed that section 50C is a deeming provision to tax the difference as capital gain where the consideration received as a result of transfer of capital assets, being land or building or both if less than the value adopted by the stamp valuation authority. It is only on account of deeming provisions of section 50C, the AO has made the addition after considering the valuation report of the valuation officer u/s 50C(2) of the act and determined the long term capital gain. The fact remains that the actual amount received was offered for taxation. It is only on the basis of the deemed consideration that the proceedings under Section 271(1)(c) of the act has been started. The revenue has failed to produce any iota of evidence that the assessee actually received one paise more than the amount shown to have been received by him. We observed that in terms of deeming provisions of section 50C, higher sales consideration of property determined by the DVO did not by itself amount to furnishing inaccurate particulars of income so as to levy penalty under section 271(1)(c) of the act. The revenue has also not shown as to how the assessee could be held to have actually received this amount which is in excess of the amount of mentioned in the sale deed. It has also not been shown as to whether any corresponding addition has been made in the hands of the buyer. We further notice that the addition was made totally by invoking the provision contained in section

*50C of the act, therefore, penalty cannot be imposed on the income determined on the basis of deeming provision of section 50C as this solitary does not lead to concealment of income or furnishing of inaccurate particulars of income, therefore, we find ld. CIT(A) is not justified in sustaining the penalty levied by the assessing officer.*

*In the circumstances, the appeal of the assessee is allowed."*

9. Considering the aforesaid decision of this Tribunal on similar set of facts, on similar grounds of appeal, wherein the Surat Bench has deleted the penalty levied under Section 271(1)(c) of the Act, therefore, by taking a consistent view, I direct the assessing officer to delete the penalty levied under Section 271(1)(c) of the Act. In the result, the grounds of appeal raised by the assessee are allowed.

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

Order announced in open court on 28<sup>th</sup> July, 2023.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 28/07/2023

*\*Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat