

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted through E-Court at Ahmedabad)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.07/Rjt/2020  
(Assessment Year: 2007-08)

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| Kanjibhai Bhimjibhai Rangani,<br>C/o. D.R. Adhia, "Om Shri<br>Padmalaya", Nr. Trikamayji<br>Haweli, 16- Jagnath Plot, Dr.<br>Yagnik Road, Opp. Imperial Hotel,<br>Rajkot-360001 | Vs. | Income Tax Officer,<br>Ward-3(1)(1),<br>Rajkot |
| [PAN No.ABGPR6501E]   |     |  |
| (Appellant)   | ..  | (Respondent)                                   |

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|------------------------------|------------------------------|
| <b>Appellant by :</b>        | Written Submission           |
| <b>Respondent by:</b>        | Shri Abhimanyu Singh, Sr. DR |
| <b>Date of Hearing</b>       | 09.08.2023                   |
| <b>Date of Pronouncement</b> | 23.08.2023                   |

ORDER

**PER SIDDHARTHA NAUTIYAL, JM:**

This appeal has been filed by the assessee against the order passed by the Ld. Commissioner of Income Tax(Appeals)-3, (in short "Ld. CIT(A)"), Rajkot in Appeal No. CIT(A)-3/10644/14-15 vide order dated 29.11.2019 passed for Assessment Year 2007-08.

2. The assessee has taken the following grounds of appeals:-

*"1. The Ld. CIT(A) has erred in law and facts in confirming penalty U/s. 271(1)(c) of Rs. 5,51,702/-. The same needs deletion.*

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2. *The Ld. CIT(A) has erred in law and facts in confirming penalty U/s. 271(1)(c) of Rs. 5,51,702/- on addition made on without proper verification and settled law in spite of relevant details furnished. The penalty needs deletion.*
3. *The Ld. CIT(A) has erred in law and facts in penalty U/s. 271(1)(c) of Rs. 5,51,702/- without considering that there is no adequate time and opportunity although the assessee specifically requested for the same. The penalty needs deletion.*
4. *The Ld. CIT(A) has erred in not bringing any cogent material justifying levy of penalty. The penalty needs deletion.*
5. *The Ld. CIT(A) has erred in not considering that penalty order is passed without giving proper and adequate opportunity. The penalty order being bad in law needs cancellation.*
6. *The penalty order being bad in law needs cancellation.*
7. *Taking into considering the legal position, statutory aspects and facts of the case no penalty ought to have been levies. The same deserves cancellation.*
8. *Without prejudice, no reasonable opportunity has been given by the Ld. CIT(A) at appellate stage. The same needs annulment.*
9. *The appellant craves leave to add / alter / amend and / or substitute any or all grounds of appeal before the actual hearing take place.”*

3. The brief facts of the case are that the assessee filed return of income showing total income of Rs. 1,20, 890/- and agricultural income of Rs. 1,58,137/- on 31.10.2017. The case of the assessee was reopened on the basis of information received from ITO, Ward 1(1), Rajkot that the assessee had sold agricultural land in joint venture with his brother Shri Rameshbhai Rangani. The total sale consideration of Rs. 75,76,250/- had been received in respect of sale of aforesaid land and 50% of the share thereof was received by the assessee. On verification of the return of income filed by the assessee, the AO observed that the assessee had not offered the profit earned from the above sale consideration in his return of income. Since the capital gains arising from sale of the land was under the purview of capital gains, the case was reopened under Section 147 of the Act and notice under Section 148 of the Act was issued on 17.02.2010. In the assessment proceedings, the AO made an addition of Rs. 36,34,125/- being the capital gains on sale of land and the same was added to the total income of the assessee. In quantum appeal, Ld. CIT(Appeals), Rajkot confirmed the addition of Rs. 36,34,125/- on account of sale of plot of land. However, he allowed deduction of Rs. 19,30,320/- as cost of improvement, being amount of premium paid by the assessee for conversion of land. Subsequently, the Assessing Officer initiated proceedings under Section 271(1)(c) of the Act and on the basis of facts as mentioned above, and a penalty amounting to Rs. 5,51,702/- was imposed by the Assessing Officer under Section 271(1)(c) of the Act. In appeal, Ld. CIT(Appeals) confirmed addition with the following observations:

*“5.0 I have carefully considered the Penalty order of the AO, the written submissions of the appellant and the rival contentions. Though the appellant has preferred a total of 09 grounds, the core issue*

*involved in this case is the levy of penalty u/s 271(1)(c) of Rs.5,51,702/-. The facts in this case are that the return of income showing total income of Rs. 1,20,890/- and agriculture income of Rs. 1,58,137/- was filed on 31/10/2017. The case was re-opened on the basis of information received from the ITO Ward 1(1), Rajkot that the assessee had sold agricultural land in joint venture with his brother Shri Rameshhhai B. Rangani. The total sales consideration of Rs. 75,76,250/- had been received and 50% of the share thereof is was received by the assessee. On verification of the return of income filed by the assessee, it was found that the assessee had not offered the profit earned from the above sales consideration. Since the gain arising from the sale of the said land was under the purview of Capital Gain, the case was re-opened u/s 147 of the Act and a notice u/s 148 was issued on 17-02-2010. An addition of Rs. 36,34,125/- being Capital Gain on sale of land was added to the total income of the assessee and the assessment was finalized on 24-12-2010 at assessed income of Rs. 37,55,020/-. The then CIT (A)-IV, Rajkot vide order dtd. 13-09-2012 has confirmed the addition of Rs. 36,34,125/- on account of capita! gain on sale of plot of land. However, he allowed deduction of Rs. 19,30,320/- in the short term capital gain as cost of improvement being amount of premium paid for conversion of land. A written submission has been filed by the appellant as reproduced above, which has been duly considered.*

**5.1** *It is noted that the appellant had sold the land situated at village Bilayala, Taluka Gondal. The AO charged capital gain there on as the said village is situated within the prescribed limit of 5 Km from Gondal. The actual distance of this land as determinate by the A.O. is 4.60Km*

*from Gondal Nagar Palika. The appellant has given submissions as reproduced above. However it is also noted that on appeal CIT(A) has confirmed the addition made of Rs. 36,34,125/- on account of capital gain on sale of plot of land. However, he allowed deduction of Rs. 19,30,320/- in the short term capital gain as cost of improvement as being amount of premium paid for conversion of land. It is also noted, that the assessee has neither filed revised return of income in response to notice u/s 148 dtd. 17-02-2010 nor given any clarification on the issues covered therein. Also in the return of income filed on 31-10-2007 declaring total income at Rs. 1,20,8907- and agricultural income of Rs. 1,58,137/-, the assessee did not show any Capital Gain in Return of Income part B-TI i.e.(computation of income) as well as schedule CG i.e. Capital Gain and in schedule EI i.e. Exempt Income. The assessee failed to comply in response to notice u/s 142(1) dtd. 01-12-2010 even after the assessee was supplied with a copy of reasons for reopening. The assessee did not submit any reply to the final, show cause notice dtd. 08-12-2010 and also did not submit any details in response to the proposal to tax the sale of land as Capital Gain. No evidences during the course of assessment proceedings were also submitted by the assessee.*

*In this view of the matter, I am of the considered opinion that the appellant has not disclosed the transaction in the regular return filed, even in response to reopening u/s 148 no return was filed. Despite various opportunities provided to the appellant no details/clarifications were provided to the AO during reassessment proceedings. The action of the AO has also been confirmed to the extent of Rs. 17,03,805/- by the*

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*then CIT(A)-IV, Rajkot. Under these circumstances, I am of the considered view that the assessee has concealed his particulars of income of Capital Gain. I am also of the considered view that the arguments made in support of grounds of appeal numbers 1,2,4,6,7 and 9 are not supported by any supporting material and are without basis in view of the above discussion. Thus grounds of appeal numbers 1,2,4,6,7 and 9 are **dismissed.**”*

4. Before us, the assessee filed written submissions in which several grounds were submitted both challenging the legality of the present proceedings and also the levy of penalty looking into the facts of the instant case. The assessee’s contention is that the land sold by him was beyond distance of 5 km from Gondal, and hence, the said land was an agricultural land as on the date of sale (as on 08.03.2007). The assessee’s contention was that the Assessing Officer imposed capital gains on the basis of report of National Highway Authority of India (reproduced at Paragraph 6.8 at Page No. 7 of the assessment order), in which the NHAI held that the land which is owned by the assessee is 4.6 km from Gondal Nagar Palika. The assessee’s contention is that the issue for consideration in this case is whether the land which was sold by the assessee is beyond the limit of 5 km from Gondal Nagar Palika or within the limit of 5 km. The assessee’s contention is that the AO was apprised by the assessee during the course of assessment proceedings that the limit of Gondal Nagar Palika had been enlarged by the Chief Officer of Gondal Nagar Palika w.e.f. 01.10.2007 only. Therefore, with respect to transactions of sale of land prior to 01.10.2007, the aforesaid land was beyond the limit of 5 km from Gondal Nagar Palika, and hence, as on the date of sale, the assessee’s land was agricultural land. Accordingly, the assessee had taken a

correct legal view that as on date of sale, the assessee's land was agricultural land and hence the same was not liable to capital gains tax. In response, DR placed reliance on the observations made by Ld. CIT(Appeals) in the appellate order.

5. We have heard the rival contentions and perused the material on record. On going to the facts of the case, we observe that firstly, in quantum proceedings the assessee was given substantial relief by Ld. CIT(Appeals), who accepted the assessee's claim for allowance of payments made for conversion of land. Secondly, we also observe that during the course of assessment proceedings, the assessee had submitted that he was under the genuine belief that the land sold by him was an agricultural land, which was situated approximately 10 km from Gondal Nagar Palika. Accordingly, as per the assessee, since the land was an agricultural land as on the date of sale, the same was not liable to capital gains tax. During the course of assessment proceedings, as is evident from Paragraph 6.1 of the assessment order, the assessee also furnished certificate of Talati cum Mantri of Billiyala Gram Panchayat in which it was stated that even till today, the agricultural land is situated at a distance of 10 km from Gondal Nagar Palika. Further, during the course of assessment, the assessee also submitted ledger account of agricultural land before the Assessing Officer for his perusal. So far as law on the subject is concerned, it is a well-settled proposition that penalty cannot be imposed on the assessee simply on the ground that the view taken by the assessee has been discarded/dismissed in quantum proceedings. In our view, in the instant facts, the assessee took a legally plausible view based on certificate issued by Talati cum Mantri of Billiyala Gram Panchayat which stated that even till today, the agricultural land is situated at a distance of 10 km from Gondal Nagar Palika.

Further, the assessee has also contended that the jurisdictional limits have undergone change from the month of October 2007, whereas the land was sold by the assessee jointly with another co-owner, much prior to that date (in the month of March 2007). In the case of **Reliance Petroproducts (P.) Ltd. 189 Taxman 322 (SC)**, the Hon'ble Supreme Court held that merely because assessee had claimed expenditure, which claim was not accepted or was not acceptable to revenue, that by itself would not attract penalty under Section 271(1)(c) of the Act. In the case of **Intas Pharma Ltd. 138 taxmann.com 474 (Gujarat)**, the Hon'ble High Court held that merely because claim on merit was not granted, penalty could not be levied. In the case of **National Textiles Corporation Ltd. 151 taxmann.com 512 (Delhi)**, the Hon'ble High Court held that where assessee due to bona fide error wrongly claimed foreign exchange rate difference as an expense and after accepting said mistake it claimed depreciation on increased cost of plant and machinery, qua which foreign currency fluctuation loss had been incurred, since once error was pointed out assessee made a course correction before assessment order was passed, in said circumstances, Assessing Officer could not impose penalty upon assessee under Section 271(1)(c) of the Act. In the case of **E-City Investments & Holdings Company (P.) Ltd. 144 taxmann.com 61 (Bombay)**, the Hon'ble High Court held that where penalty proceedings had been initiated against assessee only on account of fact that deduction, which was claimed by assessee had been disallowed, Tribunal rightly deleted penalty levied by Assessing Officer under Section 271(1)(c), as, making unsustainable claim could neither amount to concealment nor amount to furnishing inaccurate particulars of income.

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6. Accordingly, looking into the facts of the instant case, we are of the considered view that simply because the position taken by the assessee with respect to sale of agricultural land was not accepted by the Department, this alone cannot be a ground for levy of penalty under Section 271(1)(c) of the Act. The assessee had submitted during the course of assessment as well as appellate proceedings before Ld. CIT(Appeals) that the land which was sold by the assessee jointly with another co-owner was falling outside the limits of Gondal Nagar Palika, and accordingly, the said land was agricultural land as on the date of sale. Accordingly, looking into the facts of the case, we hereby direct that the penalty imposed under Section 271(1)(c) of the Act is liable to be set aside, keeping in view the facts of the assessee's case.

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

**This Order pronounced in Open Court on**

**23/08/2023**

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 23/08/2023

TANMAY, Sr. PS

**TRUE COPY**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot