

**THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH, NEW DELHI
Before Sh. C. N. Prasad, Judicial Member
AND
SHRI M. BALAGANESH, Accountant Member
(Through Video Conferencing)**

ITA No. 189/DDN/2019
(Assessment Year: 2014-15)

Shri Pritpal Singh, 71, Guru Road, Dehradun (Appellant) PAN: AHKPS3632F	Vs. ACIT, Circle-2, Dehradun (Respondent)
--	--

Assessee by :	Shri Savyasachi Kumar Sahai, Adv
Revenue by:	Shri Amar Singh Rana, Sr. DR

Date of Hearing	22/08/2023
Date of pronouncement	15/09/2023

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.189/DDN/2019 arises out of the order of the Commissioner of Income Tax (Appeals), Dehradun [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 10117/CIT(A)/DDN/2018-19 for A.Y. 2014-15 dated 17.06.2019 against the order of assessment passed u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 28.06.2018 by the Assessing Officer, ACIT, Circle-2, Dehradun (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal:-

"A) Because the rejection of the appeal by the Ld. CIT-(A) is against the facts on record and in law.

B) The Ld. AO rejected the case law merely on the ground that the facts of the case law quoted were not identical to the present situation. Further the Ld. CIT merely stated that the case law cited before him were the same as those which were cited before the Ld. AO and no new case law had been presented.

C) Further, neither the Ld. AO nor the Ld. CIT explained the non-applicability of the case law and the same were summarily rejected.

D) It is humbly submitted that the ratio decidendi / judicial principles of the case law are required to be applied in the present case, and it is inconceivable that the fact situation shall always be identical.

E) The case law cited clearly lays out the law that where the assessee had offered actual amount received on sale of property for taxation, revenue authorities were not justified in passing penalty order under section 271(1)(c) by adopting higher sale consideration under section 50C on basis of stamp duty valuation of said property.

F) The case law cited clearly lays out the law that where the addition was made by invoking provisions of section 50C without bringing any evidence on record that assessee actually received more amount than shown by it, penalty was not justified.

G) The case law cited clearly lays out the law that where the addition was made by invoking provisions of section 50C and assessee had disclosed details and documents in support of its computation of capital gain by taking into consideration the actual sale consideration received and the same has not been disputed, penalty was not justified and the same cannot constitute furnishing inaccurate particulars or concealing particulars of income.

H) In the present case, instead of sale of property, the property has been purchased. The Ld. AO has not disputed the actual amount paid by the Assessee and there is no allegation of the amount as mentioned in the sale deed being exceeded by the Assessee. The Assessee has provided all details in relation to the actual purchase consideration to the Ld. AO as well as balance statements of the last three assessment years on the instructions of the Ld. AO.

I) The reliance of the Ld. CIT(A) on the Hon'ble Supreme Court in MAC Data Pvt. Ltd. v CIT (Civil Appeal No. 9772 of 2013) is misplaced since the judgment is in relation to the interpretation of Section 271(1)(c) of the IT Act, and not the applicability of Section 50C of the IT Act, and its effect on Section 271(1)(c) of the IT Act.

J) Because both the Ld. CIT-(A) and the Ld. AO failed to appreciate that the revision of return was voluntary and as a consequence of the survey as well

as non-contesting of the same by the Assessee which the Assessee was entitled to do so.

K) There is no mens rea in relation to evasion of tax or furnishing of inaccurate information or concealment of the same.

L) Because both the Ld. CIT-(A) and the Ld. AO have wrongly applied Section 271(1)(c) of the IT Act.

M) Because the Ld. CIT-(A) has passed an order without any application of mind and the same is not a speaking order.

N) Because the Ld. CIT-(A) has failed to address several of the arguments of the Assessee which are amply stated in the appeal before the Ld. CIT-(A) as well as the written submissions submitted by the Assessee to the Ld. CIT-(A).

O) Because the Ld. AO has failed to indicate in the penalty notice whether she is of the opinion that the Assessee has "concealed particulars of your income or furnished inaccurate particulars of income" and thus the notice issued is illegal."

2. The only effective issue to be decided in this appeal is as to whether penalty u/s 271(1)(c) of the Act could be levied at an addition which has been made u/s 56(2)(vii)(b) of the Act on a deeming fiction.

3. We have heard the rival submission and perused the material available on record. The Assessee filed original return of income on 29.11.2014 for AY 2014-15 declaring total income of Rs. 19,36,520/-. The Assessee is a partner in a registered partnership firm having 20% of the share thereon. A survey u/s 133A of the Act was conducted by the Income Tax Department on one of the partners of the registered firm. The said partner made a surrender of his personal income in his personal capacity and also agreed to surrender income of the registered firm which pertained to the difference between the amount paid for purchase of property and value as per stamp duty as per

section 56(2)(vii)(b) of the Act. A property has been purchased in the joint name of the Assessee with other partners of the registered firm and as such Assessee had limited control over the transaction. The Id AO in penalty order had mentioned that the Assessee had filed his return of income for AY 2014-15 electronically on 29.11.2014 declaring total income of Rs. 19,36,520/-. Subsequently, the Assessee has filed a manual return before the Id AO on 29.11.2016 increasing the taxable income to Rs. 36,44,523/-. The Id AO observed that since the original return was filed electronically, the revised return should also be filed electronically within the time permitted u/s 139(5) of the Act. The time limit u/s 139(5) of the Act expired on 31.03.2016, hence, the AO treated the manual revised return filed on 29.11.2016 as *non est*. Later in order to regularise the said revised return, a notice u/s 148 of the Act was issued by the Id AO on 02.12.2016. The Assessee submitted that the revised return filed on 29.11.2016 may be treated as a return in response to notice u/s 148 of the Act. The case of the AO is that the additional income of Rs. 17,08,000/- offered by the Assessee u/s 56(2)(vii)(b) of the Act was not voluntary and that it is only pursuant to the survey action u/s 133A of the Act conducted in the case of Mohd. Shariq, M/s. Green Valley Partnership firm, M/s. Best Park Avenue on 08.09.2016, wherein, Mohd Shariq and his partner in their individual capacity and in the capacity of partner of the firm had surrendered an income of Rs. 5 crores which include the surrender of income made by the Assessee hereinabove for the sum Rs. 17,08,000/- u/s 56(2)(vii)(b) of the Act. Accordingly, AO concluded that this surrender of Rs. 17,08,000/- made by the Assessee only pursuant to the survey action conducted in the hands of the partnership firm in

which the Assessee was a partner and the same was not voluntary. Hence, the AO proceeded to levy penalty for furnishing inaccurate particulars of income and concealment of particulars of income within the meaning of section 271(1)(c) of the Act and levied minimum @100% tax thereon. This action of the Id AO was upheld by the Id CIT(A). Aggrieved the Assessee is in appeal before us.

4. Admittedly, survey operation was carried out u/s 133A of the Act in the hands of the partnership firm and Mohd. Shariq. It is important to note that the Assessee though being a partner in the partnership firm was not covered in the said survey operation. During the course of survey proceeding, only the partnership firm and Mohd Shariq made certain surrender of income which also included certain income u/s 56(2)(vii)(b) of the Act. The Assessee in the instant case had filed his revised return of income on 29.11.2016 before any action could be taken on the Assessee by offering Rs. 17,08,000/- as additional income u/s 56(2)(vii)(b) of the Act and paid due taxes thereon with applicable interest. Thereafter, a notice u/s 148 of the Act was issued only to regularise the said revised return filed on 29.11.2016. Ultimately in the reassessment proceedings, the revised income filed on 29.11.2016 was accepted by the Id AO and penalty proceeding u/s 271(1)(c) of the Act was initiated. As stated earlier, there is nothing brought on record that the Assessee had come forward to offer the sum of Rs. 17,08,000/- only pursuant to the survey and not on his own volition. Be that as it may, the Assessee in the instant case had offered the additional income of Rs. 17,08,000/- u/s 56(2)(vii)(b) of the Act before any detection of the Income Tax Department qua the

proceedings of the Assessee. Hence, this cannot be treated as concealment of the income or furnishing of inaccurate particulars of income on the part of the Assessee. Hence, we have no hesitation to delete the levy of penalty in the hands of the Assessee herein. Accordingly, grounds raised by the Assessee are allowed.

5. In the result, the appeal of the Assessee is allowed.

Order pronounced in the open court on 15/09/2023.

-Sd/-
(C. N. Prasad)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 15/09/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi