

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.3427/DEL/2023

Assessment Year 2006-07

Vinay Khetan, A-41/42, Sector-2, Noida.	Vs.	Deputy Commissioner of Income Tax, Circle-5(2)(1), Noida.
TAN/PAN: AFQPK4347B (Appellant)		(Respondent)

Appellant by:	Shri Amit Rai, CA		
Respondent by:	Ms. Kirti Sankratyayan, Sr.DR		
Date of hearing:	02	01	2024
Date of pronouncement:	02	01	2024

**ORDER**

**PER PRADIP KUMAR KEDIA-A.M. :**

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals), Ghaziabad ('CIT(A)' in short) dated 21.12.2009 arising from the penalty order dated 27.06.2012 passed under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2006-07.

2. The grounds of appeal raised by the assessee read as under:

*"GROUND NO. 1:*

*That the Learned Commissioner of Income-tax (Appeals) ["Ld. CIT(A)"] has grossly erred both in law and on facts in an appellate order dated 13 October 2023 passed under section 250 read with section 254 of the Income Tax Act, 1961 ("Act and in confirming the penalty order passed by Learned Assessing Officer ("Ld. AO") dated 27 June 2012.*

*GROUND NO. 2:*

*That the Ld. CIT(A) has further failed to appreciate the explanation tendered by the Appellant to explain the legal submission and as such order made in disregard of the evidence furnished and documentary*

*evidence is incorrect, invalid and untenable. Further, entire penalty order is based on whimsical, fanciful assumptions, arbitrary inferences and overlooks the legal position on record and therefore, is invalid, illegal and hence unsustainable.*

**GROUND NO. 3:**

*That on the facts and circumstances of the case and in law, the Ld. CIT(A) was not legally right in confirming the imposition of penalty amounting to INR 7,50,000 under section 271(1)(c) of the Act. The treatment accorded was wrong arbitrary and uncalled for as the Appellant has neither concealed the particulars of his income nor furnished inaccurate particulars of his income.*

**GROUND NO. 4:**

*That on the facts and circumstances of the case and in law, Ld. CIT(A) had passed the order in haste, thus ignored the facts of the case laws submitted by the Appellant in the submission dated 10 October 2023. Hence, the order passed by Ld. CIT(A) is not tenable in law.*

**GROUND NO. 5:**

*That on the facts and circumstances of the case and in law, Ld. CIT(A) had failed to appreciate the fact that assessment and penalty are both independent proceedings and any addition made in assessment, which is confirmed by the appellate authority too, does not necessarily mean the same is liable for penalty under section 271(1)(c) of the Act and thus, the appellate order deserve to be quashed as such.*

**GROUND NO. 6:**

*That the impugned order of assessment has been framed without granting fair and meaningful opportunity and, as such, the same is contrary to principles of natural justice, apart from being without jurisdiction.”*

3. Briefly stated, the assessee filed return of income for Assessment Year 2006-07 in question declaring total income of Rs.2,91,48,317/-.The return so filed was subjected to scrutiny assessment under Section 143(3). In the course of the assessment, the Assessing Officer *inter alia* observed that the assessee has purchased certain parcel of land at Rs.1,60,000/-, Rs.3,20,000/- and Rs.1,35,000 at and aggregate purchase of Rs.6,15,000/-. These plots were in turn sold at an aggregate consideration of Rs.9 lakh and Short Term Capital Gain arising thereon was offered for taxation. However with reference to Section 50C of the Act, the AO revised the sale consideration at the circle rate. The sale

consideration of Rs.9 lakh was accordingly revised and adopted at Rs.31,18,460/- and the Short Term Capital Gain was accordingly revised and enhanced. The AO also invoked the provisions of Section 271(1)(c) of the Act and alleged furnishing of inaccurate particulars of income. The assessee preferred appeal against the quantum additions, the ITAT in the quantum proceedings set aside the matter back to the file of the Assessing Officer with a direction for re-determination of fair value by making reference to the District Valuation Officer (DVO). The DVO in turn determined the fair value of the plots under sale at Rs.36,90,850/- as against the circle rate of Rs.31,18,460/- determined by the Assessing Officer. After making revision of Short Term Capital Gain in terms of directions of the ITAT, the AO imposed penalty of Rs.70,50,000/- towards furnishing of inaccurate particulars of income by invoking Section 271(1)(c) of the Act.

4. In the first appeal, the assessee did not get any relief from the CIT(A) and hence this appeal.

5. When the matter was called for hearing, the ld. counsel pointed out that the assessee has purchased parcel of land at Rs.6,15,000 and same were sold in short interval at a consideration of Rs.9 lakh resulting in short term capital gains. The AO has not disputed the purchase consideration. The AO has questioned the sale consideration owing to higher circle rate with reference to Section 50C of the Act. The ld counsel pointed out that the sale consideration substituted under Section 50C of the Act in terms of directions of ITAT by itself is not sufficient to assume furnishing of inaccurate particulars of income *per se*. It was contended that penalty proceedings are different and distinct from the assessment proceedings and therefore, the parameters

applicable to quantum proceedings do not necessarily apply to the penalty proceedings. It was thus submitted that mere deeming of a sale consideration at a different value in the wake of legal fiction of Section 50C do not tantamount furnishing of inaccurate particulars of income. It was submitted that in the wake of catena of judgment in similarly placed situation where it has been held in chorus that additions on account of such deeming fiction will not automatically lead to imposition of penalty in the absence of any material to cast aspersions on the *bona fides* of the action of the assessee. The Id. counsel submitted that it is a matter of record in the light of the sale agreement that the assessee has received a consideration of Rs.9 lakh only. Regardless of the deeming consideration presumed under Section 50C of the Act, there is no material on record to show that the assessee has received any consideration in excess of the amount referred in the sale deeds to question the propriety of the sale consideration. The penalty imposed under Section 271(1)(c) in the present case arises merely on account of substitution of deemed sale consideration by an actual sale consideration which does not warrant imposition of penalty under Section 271(1)(c), which is penal in nature. The Id. counsel further submitted that notice issued under Section 274 r.w. Section 271(1)(c) does not reflect the nature of satisfaction and nature of charge labeled against the assessee. It is not known which limb of the charge has been invoked, i.e. furnishing of inaccurate particulars of income or concealment of particulars of income. In the absence of any strike off of the inappropriate portion of the notice issued under Section 271(1)(c), the penalty imposed in pursuance of such notice is bad in law in the light of the large number of judgments governing the field including *CIT*

*vs. Fortune Hotels and Estates Pvt. Ltd., (2014) 52 taxmann.com 330 (Bom.)*

6. The Id. DR for the Revenue, on the other hand, supported the action of the Revenue Authorities imposing penalty under Section 271(1)(c). In the instant case, the Id. DR pointed out that the difference between the actual sale consideration and the deeming sale consideration determined in terms of directions of the order of the Tribunal is quite higher and nearly four times of the actual sale consideration. Such huge difference itself smacks of *mala fide*. The Id. DR thus submitted that no interference with the first appellate order confirming the penalty is called for.

7. I have carefully considered the rival submission and perused the material available on record.

8. The imposition of penalty under Section 271(1)(c) is in controversy. The penalty under Section 271(1)(c) has been imposed owing to additions in the quantum proceedings on the contours of the deeming fiction of Section 50C of the Act which provides for substitution of deemed sales consideration in place of actual sale consideration in certain circumstances specified therein. The sale consideration of Rs.9 lakhs has been accordingly substituted at Rs.31,18,460/- by the Assessing Officer. This has resulted in the corresponding increase in the taxable short term capital gains and further resulted in imposition of penalty in question.

9. I find that the issue is squarely covered in favour of the assessee by the judgment delivered by the Hon'ble Bombay High Court in the case of *CIT vs. Fortune Hotels (supra)*. The Hon'ble High Court observed that higher sale consideration of property

determined in terms of Section 50C of the Act by itself would not amount to furnishing of inaccurate particulars of income so as to levy penalty under Section 271(1)(c) of the Act. Similar view has been quoted by the Hon'ble Calcutta High Court in the case of *CIT vs. Madan Theaters Ltd. (2014) 42 taxmann.com 26 (Cal.)*. Besides, it is also pointed out on behalf of the assessee that the notice issued under Section 274 r.w. Section 271(1)(c) suffers from incurable defect inasmuch as the assessee is not privy to the nature of charge labeled against him. Consequently, the notice for continuation of the penalty proceedings being vague and non descript, penalty cannot be sustained in the impugned first appellate order.

10. I thus find force in the plea of the assessee that the action of the AO while imposing the penalty he does not meet the requirement of law. Hence, the penalty imposed by the Assessing Officer under Section 271(1)(c) is quashed.

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

**Order was pronounced and dictated in the open Court on 02/01/2024**

**Sd/-**

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**

DATED: **/01/2024**

*Prabhat*