

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member**

**ITA No. 751/Ahd/2023  
Assessment Year 2014-15**

Shri Amit Ashok Khurana, 1, Vikram Society, Gotri Road, Vadodara PAN: ADDPK6791N (Appellant)	Vs	The Dy. CIT, Central Circle-1 Baroda, (Respondent)
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**Assessee by: Ms. Urvashi Sodhan , A.R.**  
**Revenue by: Ms. Saumya Pandey Jain, Sr. D.R.**

Date of hearing : 19-12-2023  
Date of pronouncement : 05-01-2024

**आदेश/ORDER**

This is an appeal filed against the order dated 14-09-2023 passed by CIT(A)-12, Ahmedabad for assessment year 2014-15.

2. The grounds of appeal are as under:-

*"1. Ld. CIT (A) erred in law and on facts in confirming penalty levied by AO of Rs. 18,20,860/- invoking provisions of s. 271(1)(c) of the Act ignoring that appellant neither concealed income nor furnished inaccurate particulars of income.*

*2. Ld. CIT (A) erred in law and on facts in dismissing ground challenging action of AO levying penalty on dual charges of concealment of income and furnishing of inaccurate particulars of income against the provisions of law.*

*3. Ld. CIT (A) erred in law and on facts confirming penalty levied by AO merely on the basis of different method of calculating index cost employed by the appellant than by AO for computing Long Term Capital Gain on sale of property.*

*4. Ld. CIT (A) erred in law and on facts confirming penalty rejecting submissions that no inaccurate particulars were furnished by the appellant as complete details with relevant documents relating to computation of Index cost were fully disclosed at the time of filing of return as well during assessment proceedings.*

*5. Ld. CIT (A) gravely erred in law and on facts confirming action of AO levying penalty holding that appellant accepted addition of Rs. 80,35,567/- differential Long Term Capital Gains as computed by AO and paid due taxes on it.*

*6. Ld. CIT (A) erred in law and on facts in not appreciating the fact that no penalty can be levied on disallowance of a claim that is either disputable or debatable where there may be two different methods of computing the allowance.”*

3. The assessee filed return of income for assessment year 2014-15 u/s. 139(1) of the Income Tax Act on 29-11-2014 declaring total income at Rs. 2,96,17,930/-. The case was selected for scrutiny and notice u/s. 143(2) of the Act was issued on 28-08-2015 which was duly served upon the assessee. Subsequently, assessment u/s. 143(3) of the Act was completed on 31-08-2016. A total income of Rs. 3,76,53,500/- thereby making addition of Rs. 80,35,567/- on account of incorrect computation of long term capital gain. Penalty proceedings u/s. 271(1)(c) of the Act was initiated for furnishing of inaccurate particulars of income on the said addition. Notices u/s. 271(1)(c) r.w.s. 274 was issued on 31-08-2016 and 09-03-2017 thereby mentioning that the assessee concealed the particulars of income or furnished inaccurate particulars of income. After taking cognizance of the reply of the assessee dated 14-03-2017, the Assessing

Officer levied penalty of Rs. 18,20,860/- u/s. 271(1)(c) on account of concealing the particulars of income.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The ld. A.R. submitted that in quantum, the assessee accepted the addition as the assessee had the deed of cancellation and new sale deed regarding the long term capital gain and the said amount was offered for taxation after the assessment proceedings. The ld. A.R. further submitted that merely accepting the addition will not tantamount to concealment of income u/s. 271(1)(c) of the Act as the assessee has given the details of advance sale consideration paid to the parties along with agricultural land to purchase the balance sale consideration paid on date of execution and registration of sale deed in favour of the purchaser during the assessment proceedings. The details was clearly placed before the Assessing Officer as well as before the CIT(A) during the assessment proceedings and penalty proceedings. The assessee has given the details of Rs. 131 lakhs and the adjustment in that respect on both the sides of purchase and sale and thus there was no malafide intention on his part to conceal the particulars of income or hide any tax because he

had received Rs. 511 lakhs and Rs. 131 Lakhs i.e. 380 Lakhs from the vendor. The ld. A.R. relied upon the decision of Hon'ble Gujarat High Court in case of Snita Transport Pvt. Ltd. vs. ACIT (2014) 42 taxmann.com 54, Mohd. Farhan A Shaikh vs. DCIT (2021) 434 ITR 1 delivered by Hon'ble Bombay High Court by the three judges' decision. The ld. A.R. also relied upon the Tribunal's decision i.e. Sabarkantha Jilla Ru Utpadakoni Co. Op SPG Mills vs. ITO (1990) 50 taxmann.com 347 and Shri Hasmukh Jayantilal Thakkar vs. ITO vide ITA No. 32/Ahd/2017 order dated 29-5-2018. The ld. A.R. further submitted that the bonafide ignorance of law is executable specially in laws other than criminal laws for the assessee relied upon the decision of Motilal Padampat Sugar Mills Co. 118 ITR 326 as well as the decision of Hon'ble Supreme Court in case of T Ashok...vs. CIT....

6. The ld. D.R. submitted that it is not a bonafide mistake but it is in respect of indexation which led to suppression of particulars of inaccurate furnishing of income. The ld. D.R. further submitted that the intention of the party was to hide the tax and therefore the Assessing Officer as well as the CIT(A) has rightly confirmed the penalty.

7. Heard both the parties and perused all the relevant materials available on record. It is pertinent to note that at

the time of assessment, the assessee has given all the details in respect of incorrect computation of capital gains offered by the assessee. In fact, the assessee has accepted the addition in quantum by stating therein that it is the bonafide mistake on the part of the assessee. From the perusal of the assessment order, it appears that the details of audited balance sheet and tax audit report in Form 3CB and 3CD was before the Assessing Officer and the details of advance sale consideration paid to the parties along with balance and consideration details and registration of sale deed was placed before the Assessing Officer during assessment proceedings. The contention of the ld. D.R. that it is deliberate mistake for claiming lesser capital gain appears to be incorrect as the assessee due to the computation error which cannot be treated as the intentional mistake but is a bonafide mistake. Beside this, the notice issued u/s. 274 r.w.s. 271(1)(c) as stated out the concealment of particulars of income but has reflected both the limbs without any specific limb mentioning in assessee's case. The decision of Hon'ble Apex Court in case of CIT vs. SSA's Emerald Meadows (2016) 73 taxmann.com 241 (Kar)/(2018) 35 taxmann.com 250 is also applicable in the assessee's case. As well, the assessee's mistake cannot be termed as the concealment as held by the Hon'ble Bombay High Court in case of Mohd. Farhan A Shaikh (supra). The decision of Hon'ble Apex Court in case of

CIT vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158 (SC) is also applicable in assessee's case. Hence, the Assessing Officer as well as the CIT(A) was not right in imposing the penalty. Hence, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 05-01-2024

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

**Ahmedabad : Dated 05/01/2024**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद