

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 2841/Mum/2023
(Assessment Year: 2018-19)**

Tirupati Developers, Ground Floor, MAT Cornel Heights, Marian Colony, Borivali West, Mumbai- 400103 PAN : AAGFT7632K	Vs.	Additional, Joint, Deputy, Assistant Commissioner of Income Tax, ITO, NFAC, Delhi.
Appellant) : Respondent)		

Appellant/Assessee by : Ms Zarna Chandwani, CA
Revenue/Respondent by : Shri P.D. Chougule, Sr. DR

Date of Hearing : 10.01.2024
Date of Pronouncement : 16.01.2024

ORDER

Per Padmavathy S, AM:

This appeal is against the order of Commissioner of Income Tax, Appeals, / National Faceless Appeal Centre [in short ‘the CIT(A)’] dated 19.06.2023 for the AY 2018-19.

2. The assessee is a partnership firm engaged in the business of builders and developers. The assessee filed the return of income for assessment year 2018-19 declaring income at nil. The case was selected for scrutiny for the reason that specific information was received from sub registrar office that the assessee has

sold immovable property on 29.07.2017 for consideration of Rs.10,00,000/- whereas the market value of the said property is Rs.40,42,000. The assessee submitted before the assessing officer the copy of redevelopment agreement between assessee and Sterling Apts CHS Ltd by virtue of which the assessee has the right to sell the saleable area after redevelopment of the society. The assessing officer held that the assessee has sold Flat No. Sadnika KRA 202, Dusara Majala, Sterling Co-op Housing Society, Borivali, Mumbai for a sale consideration of Rs.10,00,000 whereas the stamp duty value of the property is Rs.40,42,000. Therefore the assessing officer proceeded to make an addition under section 50C of the income tax act (the Act) for the difference of Rs.30,42,000. The assessing officer also initiated penalty proceedings under section 274 r.w.s.270A for the reason that the assessee has misreported the income. The assessing officer passed the penalty order levying a penalty of Rs.18,79,956 for the reason that the assessee has not responded to the show cause notices and that the assessee has not reported the income arising from the sale of the immovable property.

3. Aggrieved the assessee filed further appeal before the CIT(A) who confirmed the levy of penalty by the assessing officer. The assessee is in appeal before the Tribunal contending the levy of penalty under section 270A.

4. The ld AR submitted that there is no misreporting of income by the assessee and that the quantum addition is made by the revenue on the basis of a misunderstood fact. The ld AR submitted that the impugned transaction has been incorrectly taken as sale of flat whereas the correct fact is that the assessee sold only the additional area in the flat developed by the assessee for which the purchaser has agreed to pay the consideration. The ld AR argued that since there is

no merit in the quantum addition, the penalty levied for the reason that the income is reported is not sustainable.

5. The Id DR relied on the order of the lower authorities

6. We heard the parties and perused the material on record. We have while adjudicating the quantum appeal vide ITA No.2628/Mum/2023, have deleted the addition made by the assessing officer under section 50C for the reason that the assessee has received the consideration of Rs.10,00,000 only towards the sale of additional area of 125 sq.ft and not the entire flat and also for the reason that no addition under section 50C can be made when the assessee is engaged in the business of builders and developer where the income from sale of property is offered under the head Profits and Gains from Business or Profession. Considering the fact that the addition made in the quantum appeal is deleted, we hold that the penalty levied under section 274 r.w.s. 270A stating that the assessee has misreported the income is not sustainable. Accordingly we delete the penalty levied by the assessing officer.

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

Order pronounced in the open court on 16-01-2024.

Sd/-

(NARENDER KUMAR CHOUDHRY)

Judicial Member

**SK, Sr. PS*

Sd/-

(MS. PADMAVATHY S)

Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent

3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai