

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
SHRI M BALAGANESH, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.2248/Del/2018

निर्धारणवर्ष/Assessment Year:2005-06

BHA Associates Pvt. Ltd., 40/43, 2 <sup>nd</sup> Floor, C.R. Park, New Delhi. PAN No. AABCB4540L	<u>बनाम</u> Vs.	ACIT Central Circle-29, New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

<b>Assessee by</b>	<b>Ms. Shweta Bansal, CA</b>
<b>Revenue by</b>	<b>Shri Kanv Bali, Sr. DR</b>

सुनवाईकीतारीख/ Date of hearing:	18.03.2024
उद्घोषणाकीतारीख/Pronouncement on	20.03.2024

**आदेश /ORDER**

**PER C.N. PRASAD, J.M.**

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals)-30, New Delhi dated 21.02.2018 for the AY 2005-06 in sustaining the penalty levied u/s 271(1)(c) of the Act.

2. Ld. Counsel for the assessee, at the outset, submits that the Tribunal in ITA No.6621/Del/2015 dated 14.02.2024 deleted the addition made in the assessment framed u/s 153A(b) of the Act,

wherein an amount of Rs.40,03,349/- was brought to tax under long term capital gain has been deleted and the copy of the order of the Tribunal is placed on record. Ld. Counsel for the assessee, therefore, submits that since the addition made in the quantum assessment has been deleted it is requested that the penalty levied by the Assessing Officer be deleted.

3. Ld. DR fairly submits that the quantum addition has been deleted by the Tribunal.

4. We have heard the rival submissions, perused the order of the Tribunal. We observe that the Tribunal deleted the addition made by the AO in respect of long term capital gains observing as under: -

*“13. We have heard both the parties and also perused the relevant materials placed on record. The entire addition is based on the agreement to sale, which was unregistered between both the co-owners, i.e., the assessee as well as M/s Pravin Juneja HUF, wherein it mentions the amount of Rs.82,62,500/- and it has been treated as both the co-owners have received the same amount as per the sale agreement. One very important fact is that the agreement to sale was not converted to final sale deed and the same property has been sold to another person, i.e., Mrs. Neena Chaudhari for sum of Rs.78 lakhs. This is clearly evident from the copy of the sale deed dated 30th June, 2004 placed in the paper-book and also before the AO and CIT (A). Once the same property has been sold to one person, then to take cognizance of agreement to sale for taxing it as long term capital gain, is wholly unwarranted. Though, there is discrepancy in the agreement to sale, wherein, it is*

*stated that Rs.8 lakhs was received by the assessee, then what happened to that Rs.8 lakhs because same does not find mention in the final sale deed. The agreement to sale was with a different party and that agreement to sale was never fructified and same was cancelled due to various discrepancies. Once the property has been sold as a whole to one person for an amount of Rs.78 lakhs, then we do not find any reason to justify such an addition based on agreement to sale with Smt. Krishna Dandona. Accordingly, the entire basis and reasoning given by learned CIT(A) cannot be sustained. One of the reason given by him that there is no agreement to sale entered with Mrs. Neena Chaudhari is not a reason for disbelieving the registered sale deed over unregistered agreement to sale, which was never acted upon. Thus, draft agreement to sale cannot be believed over the registered sale deed and therefore the addition made by the AO and sustained by the CIT(A), is deleted. Since, M/s. Pravin Juneja HUF was also the co-owner and similar finding has to be given, therefore, in the case of M/s. Pravin Juneja HUF as well, the addition is directed to be deleted.”*

5. Since the addition made in the assessment framed u/s 153A(b) of the Act has been deleted by the Tribunal the penalty levied on the basis of such addition cannot stand. Therefore, we direct the AO to delete the penalty levied u/s 271(1)(c) of the Act.
6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 20.03.2024

**Sd/-  
(M BALAGANESH)  
ACCOUNTANT MEMBER**

**Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER**

Dated: 20.03.2024

\*Kavita Arora, Sr. P.S.

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT  
(DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**