

**IN THE INCOME TAX APPELLATE TRIBUNAL  
NAGPUR BENCH**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER  
AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.01/NAG/2023  
निर्धारण वर्ष / Assessment Year : 2016-17**

Ms.Devyani Ajit Mulik, Plot No.7, Wardha Road, Rahate Colony, Nagpur 440 022 Maharashtra PAN : AOWPM9395N	Vs	ACIT, Circle-1, Nagpur
Appellant/ Assessee		Respondent /Revenue

Assessee by	None – AR
Revenue by	Shri Abhay Y. Marathe - DR
Date of hearing	27/02/2024
Date of pronouncement	18/03/2024

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by assessee against the order of Commissioner of Income-tax (Appeals) in National Faceless Appeal Centre, Delhi for Assessment Year 2016-17 u/s.250 of the Income-tax Act, 1961 (hereinafter referred to as ‘The Act’) on 29.11.2022 emanating from Penalty order passed u/s.271(1)(c) dt. 28.06.2019. The assessee has raised the following grounds of appeal:

“1. That no adequate opportunity was afforded to the Assessee and learned Commissioner of Income Tax(A) has not considered the explanation furnished by the Assessee and has passed a cryptic order.

2. That the value adopted by the Stamp Duty Authorities is only on the estimate basis and not on the actual transaction. There is not an iota of evidence that the Assessee is in receipt of any consideration other than what is stated in the sale deed. Hence, it is prayed not to levy and penalty on the estimated figure.

3. That it is humbly submitted that the learned AO have levied penalty on the assessment done on protective basis as he did not wait for valuation report from the department valuation officer and Commissioner of Income Tax (Appeal) erred in confirming the penalty based on the protective assessment.”

### **BRIEF FACTS OF THE CASE :**

2. The assessee has shown long term capital gain for the year under consideration. During the assessment proceedings, assessee submitted that initially sale deed was executed on 25.04.2011 for Rs. 2,21,00,000/-. However, the purchaser did not honour and cheques were bounced. Thus, assessee did not receive any consideration as per the sale deed dated 25.04.2011. In F.Y. 2015-16, when the sale deed for constructed flats was executed in the name of the assessee on 24.07.2015, the assessee received her unpaid consideration for sale of land. Accordingly, assessee offered the same for taxation in F.Y. 2015-16. The Assessing Officer (AO) observed that market value as per the stamp duty authorities of the impugned land was Rs.4,56,15,200/-. Therefore, the AO gave show cause to the assessee as to why the sale consideration shall not be taken at Rs.4,56,15,200/- for the purpose of section 50C of the Act. Assessee requested to refer it for valuation.

Assessee also submitted before the AO that since the land is closer to airport there are restrictions on the construction. However, the valuation report was not received and AO passed the assessment order taking the consideration at Rs.4,56,15,200/- for the purpose of section 50C of the Act. Accordingly, AO made addition of Rs.2,35,08,703/- as the difference between long term capital gain shown by the assessee in the return of income and as calculated by the AO. AO also initiated penalty u/s.271(1)(c) for furnishing inaccurate particulars of income. Vide order dated 28.06.2019, AO levied penalty u/s. 271(1)(c) after considering the reply of the assessee for furnishing inaccurate particulars. Aggrieved by the penalty order, the assessee filed appeal before the Id. CIT(A). The Id. CIT(A) confirmed the penalty.

**SUBMISSION OF LD. AUTHORISED REPRESENTATIVE (AR):**

3. None appeared by the assessee.

**SUBMISSION OF LD. DEPARTMENTAL REPRESENTATIVE (DR) :**

4. Learned DR relied on the orders of the CIT(A) and AO.

**FINDINGS AND ANALYSIS :**

5. We heard the Id. DR and perused and records. In this case, it is a fact that assessee had offered long term capital gain for A.Y. 2016-17. Assessee had filed copy of sale deed. Assessee also explained to the

AO that actual sale deed was executed on 25.04.2011, but due to some reason, the purchaser could not pay to the assessee and subsequently the amounts were paid on 24.07.2015. Therefore, assessee pleaded that the valuation should be considered as on 25.04.2011. It is a fact that AO has invoked the provisions of section 50C of the Act. It is a deeming fiction. Admittedly, assessee has not received any such excess consideration. AO has not proved that assessee had received any such excess consideration. The entire assessment order and penalty order are based on the sale deed which was actually executed on 25.04.2011. In these facts and circumstances of the case, we are of the considered opinion that assessee had filed all necessary details and disclosed the transaction. Therefore, it cannot be alleged that there was inappropriate particulars filed by the assessee. We find support from the judgment of the Hon'ble jurisdictional High Court in the case of *CIT Vs. Fortune Hotels and Estates (P) Ltd. (2014) 52 taxmann.com 330 (Bombay)*, on identical facts, wherein it was held that penalty levied u/s.271(1)(c) is not sustainable as there was no filing of inaccurate particulars by assessee and addition was based on deemed provisions of section 50C of the Act. Therefore, respectfully following the judgment of Hon'ble jurisdictional High Court (supra), we direct the AO to delete the penalty levied u/s.271(1)(c) of the Act.

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

Order pronounced in the open Court on 18<sup>th</sup> March, 2024.

Sd/-  
(S.S.GODARA)  
JUDICIAL MEMBER

Sd/-  
(DR. DIPAK P. RIPOTE)  
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 18<sup>th</sup> March, 2024  
Satisfy\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, concerned.
4. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, Nagpur Bench,  
/ DR, ITAT, "Nagpur" Bench.
5. गार्डफाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune