आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

आ.अपी.सं /**ITA No. 1/Hyd/2023**
(निर्धारण वर्ष/Assessment Year: 2014-15)

Annapurna Boddu West Godavari PAN:AYXPB7323A	Vs.	Assistant. C. I. T. Central Circle 1(2) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri S.Rama Rao, Advocate	
राजस्व द्वारा/Revenue by::	Smt. Sheetal Sarin, DR	
सुनवाई की तारीख/Date of hearing:	06/03/2024	
घोषणा की तारीख/Pronouncement:	27/03/2024	

आदेश/ORDER

Per R.K. Panda, Vice-President

This appeal filed by the assessee is directed against the order dated 19.07.2022 of the learned CIT (A)-11, Hyderabad, relating to A.Y.2014-15.

2. Levy of penalty of Rs.24,00,000/-by the Assessing Officer u/s 271(1)(c) of the I.T. Act which has been confirmed by the learned CIT (A) is the only issue raised by the assessee in the grounds of appeal.

3. Facts of the case, in brief, are that the assessee is an individual and had filed her return of income for the AY 2014-15 on 31/03/2016 admitting NIL income. Subsequently, a Search & Seizure operation us 132 of the Act was conducted on 13.12.2017 in the case of M/s Meenakshi Infrastructures Pvt Ltd and others covering the office premises of the company and the residential premise of its directors and their family members including the assessee. Sri Boddu Srinivas, son of the assessee, is a director in M/s Meenakshi Infrastructures Pvt Ltd. He has subscribed to 4,00,000 shares of M/s RISA International Ltd through preferential allotment at a face value Rs. 10/- in the year 2012. The shares were allotted to him on 13/08/2012 as per the share certificate issued to him. Subsequently, he gifted 1,00,000 shares to his Mother Smt. Boddu Annapurna i.e. the assessee. The assessee sold 15,000 shares (FV of Re.1) during the A.Y 2014-15 for a consideration of Rs. 83,15,000/-. The assessee treated the receipts from the sale of the shares of M/s RISA International Ltd as Long-Term Capital Gains (LTCG) which is exempted from tax as per the provisions of the section 10(38) of the IT Act, 1961.

4. During the course of assessement proceedings, the Assessing Officer confronted the assessee to explain as to why the Long-Term Capital Gain should not be added to the total income of the assessee. He also confronted the statement recorded of his son Sri Boddu Srinivas, u/s 132(4) of the I.T. Act and the affidavit of the assessee withdrawing the claim of exemption u/s 10(38). Rejecting the various explanations given by the assessee and

observing that the transactions were sham transactions and aimed only to bring unaccounted money in the guise of Long-Term Capital Gain and that the paper work has been done merely to give a colour of authenticity to the transaction and by creating facade of legitimate transaction, the Assessing Officer rejected the claim of Long-Term Capital Gain and made addition of Rs.83,15,000/- as income from other sources.

5. The Assessing Officer thereafter initiated penalty proceedings u/s 271(1)(c) of the I.T. Act. Rejecting the various explanations given by the assessee and relying on various decisions, the Assessing Officer levied penalty of Rs.24,00,000/- u/s 271(1)(c) of the I.T. Act by recording as under:

7. Assessee's submission is carefully considered and the claim of the assessee is not accepted for the following reasons:

1. Sri. Boddu Srinivas in the statement recorded under oath u/s. 132(4) accepted that the assessee has accepted that the exemption which was claimed by the assessee will be withdrawn and the corresponding amount will be offered to tax. However, the assessee failed to file return and pay tax on the amount claimed as exempt.
2. The assessee has failed to file return of income in response to Notice u/s. 148 admitting the income claimed as exempt.
3. Even during assessment proceedings, the assessee has failed to offer to tax the amount claimed as exempt. Hence, the claim that the amount was offered to tax voluntarily is not correct.
4. The assessee has received shares of M/s RISA International Ltd as gift from his son. These shares were purchased by assessee's son inspite of company's

zero or negative profits. Subsequently, the share prices of this company were subjected to manipulation through circular trading of shares amongst selected group of companies. The shares with thus artificially inflated price were offloaded through companies whose funding was provided by the same set of people who wanted to convert black money into white without any taxation. Hence, the assessee has immediately sold the shares at very high price after one year of holding them, to claim this sale consideration as LTCG exempt u/s 10(38). Since, the assessee has opted for this coloured mechanism for tax evasion by concealing income in the guise of LTCG exemption.

5. This concealed income would not have come to light had there not been a search in this case and had this escaped income not added to income u/s 147. This amounts to a clear concealment of income.
6. Though the assessee, upon confrontation with facts and circumstances during the search operation, has admitted to have been claimed LTCG exemption u/s 10(38) only to evade taxes on the undisclosed income thereof. The assessee's voluntary admission does not provide any immunity against penalty for the violations of the Act. ***Attention is drawn to the decision of Supreme Court in the case of Mak Data Pvt Ltd Vs CIT [2013] 358 ITR 593 [SC]*** in which court has clearly laid down the principle that voluntary disclosure cannot be a prayer for assessee for non-levy of penalty.
7. The assessee relied on the case of [Chandrapal Bagga v Income Tax Appellate Tribunal (2003) 261 ITR 67 (Raj HC)] wherein , the Hon'ble High Court of Rajasthan has stated that *"If it has claimed any exemption after disclosing the relevant basic facts and* ***under ignorance*** *of the provisions of the Act of 1961, and not offered that amount for tax, in such cases, penalty should not be imposed".* However, in this case, it is clearly established in that the assessee has claimed LTCG Exemption u/s 10(38) by price manipulation of shares. It is clear that the assessee has claimed exemption with complete knowledge and facts. Hence, the case law stated above does not apply in this case.
8. In respect of the Case, *CIT v Harshavardhan Chemicals & Minerals Ltd. (2003) 259 ITR 212 (Raj HC)].* the Hon'ble High Court opined that *"when the assessee has claimed some amount though that is debatable, in such cases, it cannot be said that the assessee has concealed any income or furnished inaccurate particulars for evasion of the tax. In view of the findings of the Tribunal, no case is made out for interference by this court".* However, in the case of the assessee the transactions are sham transactions and aimed only to bring unaccounted money in the guise of exempted LTGC. In this case, the issue is well settled and not is debatable.
9. Regarding the Case, *CIT v Ashim Kumar Garwal (2005) 275 ITR 48 (Jharkahnad)]* it was held that *"There is nothing on the record to suggest that*

there was a deliberate attempt on the part of the assessee in furnishing of inaccurate particulars of income. Even no circumstantial evidence found from which it can be gathered that the omission was attributable to an intention of desire on the part of the assessee to hide or conceal the income so as to avoid the imposition of tax thereon". In the case of the assessee, the evidence gathered clearly establish that claim of expenditure was attributable to an intention of desire on the part of assessee to avoid imposition of tax on LTCG.

8. Therefore, the provisions of Sec.271(1)(c) are squarely applicable in the present case. In this connection, relevant extract of Sec.271(1)(c) is reproduced here under:

"...271. (1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—

1. .....
2. .....
3. *has concealed the particulars of his income or furnished inaccurate particulars of such income, or*
4. .....

he may direct that such person shall pay by way of penalty,—

1. .....
2. .....

3. in the cases referred to in clause (c) or clause (d), ***in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times,*** *the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits.*

Explanation 1.—Where in respect of any facts material to the computation of the total income of any person under this Act,—

(A) such person fails to offer an explanation or offers an explana- tion which is found by the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner to be false, or

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,

> *then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.*

> 9. In view of the reasons given above, I hold that assessee has concealed his income by not offering the same to tax in the guise of LTCG Exemption u/s 10(38) of the IT Act, 1961, in respect of the following additions made in the assessment order:
>
> Disallowance of exemption claimed u/s 10(38)-- Rs.83,15,000/-
>
> 10. Hence, I am of the opinion that it is a fit case to levy penalty u/s.271(1)(c) of the I.T. Act, 1961, which shall not be less than, but shall not exceed three times the amount of tax sought to be evaded by reason of concealment of income.
>
> 11. The minimum and maximum penalty for the undisclosed income works out to Rs. 23,94,235/- and Rs.71,82,705/- respectively. Considering the facts and circumstances of the case, **I levy penalty of Rs.24,00,000/- (Rupees Twenty Four Lakhs)**. It should be paid as per the demand notice and challan enclosed.

6. In appeal, the learned CIT (A) confirmed the penalty levied by the Assessing Officer by observing as under:

> **6.** Decision:
>
> In the instant case, the assessment was completed by holding the appellant's investment in shares of M/s RISA International Ltd (RIL) as non bona fide and thereby treating the amount of Rs.83,15,000/- as 'Income from Other Sources' as against appellant's claim of LTCG in the return of income filed response to notice u/s 148, which was claimed as exempt u/s.10(38). Subsequently, penalty order u/s. 271(1)(c) was passed levying penalty of Rs. 24,00,000/- .
>
> Going into facts of the case, it is seen that the appellant's son had purchased 4,00,000 shares of M/s RISA International Ltd and gifted 1,00,000 shares to the appellant and the appellant had claimed an exemption u/s. 10(38) on account of sale of 15,000 shares of M/s RISA International Ltd during the year under consideration. The appellant purchased the shares of

M/s RISA International Ltd at a face value of Rs.10/- per share and subsequently the face value was reduced to Re.1/- per share, thus resulting 10 times more number of shares received by the appellant than what were originally purchased. The shares were sold for an amount of Rs. 83,15,000/- during AY 2014-15.

During the course of Search proceedings u/s 132 when enquired about the transactions, Sri Boddu Srinivas, son of the appellant admitted that he looked after the transactions of the appellant and agreed to withdraw the claim u/s 10(38) and to offer the same to taxation. Subsequently, the appellant filed an affidavit before the DDIT(Inv) stating that she would withdraw the exemption claimed u/s. 10(38) and pay taxes accordingly. However, in the return of income filed subsequently in response to notice u/s 148, the appellant did not withdraw the exemption u/s 10(38).

Further, the appellant itself has clearly admitted to withdraw the claim of exempt income u/s 10(38), which itself proves that the entire apparatus of purchase and sale of shares was used to route the unaccounted income of the appellant.

In this regard, it is to be noted that the Investigation Wing, Pune has identified "M/s RISA International Ltd" as a penny stock. The Scrip Operator of M/s RISA International Ltd, Sri Naresh Jain had admitted in the statement recorded u/s. 132(4) that he was involved in rigging of price of Scrip of M/s RISA International Ltd with the motive and intend to provide accommodation entries of long term capital gains which were exempt from tax. The basis for treating RISA International Ltd as a penny stock, modus operandi of routing

unaccounted money through bogus capital gains claim through the scrip M/s. RISA International Ltd has been discussed at length in the Assessment Order and the reasons for levy of penalty have been elaborately discussed in the Penalty order. The description and analysis by the Assessing Officer and the material unearthed during the course of investigation by the Directorate of Investigation very clearly brings out that all the transactions were structured and managed with a clear intent of evading taxes by generating an apparent Long Term Capital Gain to be exempt from taxes, which was actually only a colouring of unaccounted cash.

The examination of the operators and the evidences has been brought out in the assessment order leading to the addition and the penalty order resulting in the penalty under appeal.

The description in the assessment order and the penalty order, very clearly brings out that the documents were a creation to mask the unaccounted cash in to a Long Term Capital Gain. Therefore, the documents submitted are effectively sham and does not depict the actual transactions. The actual and the real intent was unearthed by the intensive investigation carried out by the Department and when the same was confronted to the appellant and realizing that large number of entities are involved in this bogus orchestration, the appellant had no option but to except the transaction as bogus.

The confrontation and the availability of the documents, evidences and statements made the appellant succumb into the acceptance of the fact of what the appellant actually entered into during the course of search and post

search proceedings, but again subsequently failed to admit in return of income.

These are cases of the absolute and conscious intent to evade taxes, using organized operators. These are transactions pertaining to effectively an organized financial racket, wherein the laundering of unaccounted cash is made into a sudden, unnatural and a preplanned gain in the form of Long Term Capital Gain by paying a small fee in order to evade taxes. This stark reality has been unearthed by the Directorate of Investigation and the evidences and the circumstances cannot lead to any other conclusion but for the conclusion drawn by the assessing officer in levying the penalty u/s. 271(1)(c).

Therefore, all the conditions and the requirement for the levy of penalty u/s. 271(1)(c) are satisfied and the appellant in view of this unearthing of organized financial racket of tax evasion does not have anything to say in its defense.

In view of the above, the penalty u/s. 271(1)(c) levied by the AO is upheld.

Further, as per Explanation 1 to Section 271(1)(c), the necessary ingredients for attracting penalty are that (i) the person fails to offer the explanation, or (ii) he offers the explanation which is found by the AO to be false, or (iii) the person offers explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts

relating to the same have been disclosed by him. The relevant Explanation is as under:

"271. (1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or

.....

Explanation 1.—Where in respect of any facts material to the computation of the total income of any person under this Act,—

(A) ***such person fails to offer an explanation*** *or* ***offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner to be false****, or*

(B) ***such person offers an explanation which he is not able to substantiate*** *and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,*

then, ***the amount added or disallowed in computing the total income of such person*** *as a result thereof shall, for the purposes of clause (c) of this sub-section,* ***be deemed to represent the income in respect of which particulars have been concealed****."*

In the instant case, the appellant has neither provided any bonafide explanation regarding the claim of exemption of LTCG u/s 10(38) nor could rebut the observations and contentions of the Assessing Officer made in the assessment order and has not filed any appeal against the said order. The addition in such cases has also been confirmed by the Hon'ble Kolkata High Court recently in large number of cases. Further, during the post-search proceedings, the appellant admitted to withdraw the claim and subsequently retracted on the same during the filing of return. Therefore, it is clear that the appellant has failed to offer an explanation regarding the claim of exemption of LTCG u/s 10(38) but for merely retracting on the admission made in the affidavit.Hence, the ground no. 2 is dismissed.

The appellant vide Ground no.3, contends that the claim made in the return of income if not acceptable to revenue will not permit levy of penalty. As discussed in the preceding paragraphs, the appellant admitted to have routed her unaccounted money through LTCG mechanism and agreed to withdraw the claim made u/s. 10(38). Further, an affidavit was filed before the DDIT(Inv) during post search proceedings. In spite of the said admission, the appellant did not withdraw the claim in the return filed in response to notice u/s. 148. The claim of unaccounted income as Long Term Capital Gains itself is not bona fide in view of the detailed discussions in preceding paragraphs. The claim of the appellant is to simply avoid penalty and thus defeating the purpose of penal provisions. Accordingly this ground is dismissed.

The ground no.1 and 4 are general in nature and need no separate adjudication.

To sum up the appeal is **dismissed**.

7. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal.

8. The learned Counsel for the assessee strongly challenged the order of the learned CIT (A) in confirming the penalty of Rs.24,00,000/- levied by the Assessing Officer u/s 271(1)(c) of the Act. He submitted that the assessee had claimed Long-Term Capital Gain u/s 10(38) of the I.T. Act and full details were furnished before the Assessing Officer. There was absolutely no concealment or furnishing of inaccurate particulars of income. He

submitted that the amount of Long-Term Capital Gain was duly disclosed in the computation of income and therefore, it cannot be said to be a case of the assessee attempting to make a false claim. Referring to the decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts (P) Ltd (322 ITR 158 (S.C) he submitted that the Hon'ble Supreme Court in the said decision held that if all the particulars of income are duly disclosed, mere disallowance of a claim or non-acceptance of a claim would not attract levy of penalty u/s 271(1)(c) of the I.T. Act.

9. Referring to the decision of the Hon'ble Supreme Court in the case of Price Waterhouse Coopers (P) Ltd vs CIT reported in (2012) 25 Taxmann.com (S.C) he submitted that the Hon'ble Supreme Court in the said decision has held that a bonafide mistake on the part of the assessee would not attract levy of penalty where all the particulars of income are duly disclosed and where there is just a failure on the part of the assessee to act as per the provisions of the Act while computing the income. He also relied on the following decisions and submitted that under somewhat similar circumstances, the penalty u/s 271(1)(c) is held to be not justified:

a) Late Shri Pawan Garg vs. ACIT in ITA No.1475/CHD/2018 dated 17.01.2022

b) Dineshkumar Kanjibhai Patel – HUF vs. Income Tax Officer in ITA No.367/Ahd/2023 dated 14.07.2023

c) PCIT vs. Indusind Bank Ltd (2024) 158 Taxmann.com 575 (S.C)

d) Sarika Dugar vs. Income Tax Officer in ITA No.363/Kol/2023 order dated 16.11.2023

e) CIT vs. Gurdaspur Coop.Sugar Mills (P) Ltd reported in (2024) 159 taxmann.com 7 (S.C)

f) PCIT vs. E-City Investment & Holdings Company (P) Ltd

g) PCIT vs. Ashok Kumar Manekal Parikh 274 Taxmann 457

h) Trine Entertainment Limited Vs ITO (ITAT Mumbai) in ITA No.276/Mum/2023 order dated 10.05.2023

10. The learned DR, on the other hand, heavily relied on the orders of the Assessing Officer and the learned CIT (A). She submitted that the evidences available with the Department clearly and categorically establish absolute and conscious intent on the part of the assessee to evade tax using organized operators. The assessee had deliberately and willfully planned the sham share transactions for laundering her unaccounted money. She submitted that in the present case, the assessee was not under a mistaken belief but had in fact deliberately and willfully concealed income by entering into sham share transactions. Merely because the transactions are reflected in the Bank Account statement and supported by contract notes, the same will not prove that they were genuine transactions. Referring to various decisions, she submitted that the penalty levied by the Assessing Officer u/s 271(1)(c) and upheld by the learned CIT (A)

is justified under the facts and circumstances of the case. She relied on the following decisions:

i) Pr. CIT vs. JMJ Essential Oil Company (2023) 148 Taxmann.com 447 (HP)

ii) JMJ Essential Oil Company vs. CIT (2023) 148 taxmann.com 448 (S.C) (SLP dismissed)

11. Referring to the decision of the Coordinate Bench of the Tribunal in the case of Shri Shavva Sudheer Reddy vs. ACIT vide ITA No.402/Hyd/2022 order dated 22.05.2023, she submitted that the Tribunal under somewhat similar circumstances has upheld the penalty levied by the Assessing Officer on the ground that the addition so made was not voluntary but on being confronted during the assessement proceedings on the basis of seized material. She submitted that the case of the assessee in the instant case is still worse than the case decided by the Tribunal in the case of Shri Shavva Sudheer Reddy where he has admitted the additional income. However, in the instant case, despite given opportunity, the assessee has not voluntarily come forward by declaring additional income which was admitted by her as well as her son who was looking after her financial affairs admitted during the course of search.

12. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also

considered the various decisions cited before us by both the sides. We find the AO in the instant case made addition of Rs.83,15,000/- by rejecting the claim of Long-Term Capital Gain u/s 10(38) on the ground that investment in shares of M/s RISA International Ltd by the assessee is not bonafide. We find the assessee did not challenge the addition before the learned CIT (A) and the Assessing Officer thereafter levied penalty of Rs.24,00,000 u/s 271(1)(c) of the I.T. Act which has been upheld by the learned CIT (A). We have already reproduced the findings of the learned CIT (A) confirming the penalty levied by the Assessing Officer in the preceding paragraph.

13. We do not find any infirmity in the order of the learned CIT (A) on this issue. A perusal of the assessment order, the statement recorded of Mr. Boddu Srinivas who was looking after the affairs of the assessee show clearly that the transactions are sham share transactions and not genuine. In fact, in his reply to question No.48, Shri Boddu Srinivas has replied as under:

> *"Q.48. In view of the above answer please explain as to why the exemption claimed on the Long-Term Capital Gains on the shares of RISA International Ltd should not be disallowed and treated as unexplained income for the A.Y 2014-15 and 2015016.*
>
> *Ans. I admit that I have used the Scrip of M/s. RISA International Ltd for making money. The details of taxability and consequent disclosure will be given in the office. It was used only to claim exemption on it. I have sold part of the shares myself and my family members for total amount of Rs.7,75,00,612/- (Rs.5,92,57,625 in financial year 2013-14 and Rs.1,82,42,987/- in financial year 2014-15). The person-wise details are as under:*

Name	*Relation*	*A.Y 2014-15*	*A.Y 2015-16*
B Srinivas	*Myself*	*3,06,83,250*	*1,82,42,987*
B.Anuradhadevi	*Wife*	*1,41,45,000*	*0*
B Hamanth	*Elder son*	*61,14,375*	*0*
B.Annapurna	*Mother*	*83,15,000*	*0*

I submit that this exemption which I have claimed will be withdrawn if necessary and the corresponding amount will be offered to tax after consulting my other two friends who are also directors in M/s. Meenakshi Infrastructure Pvt. Ltd by name Shri Katragadda Srinivas Rao and Shri Chitturi Sivaram Prasad, as additional income over and above the declared income as deemed fit".

14. We find the assessee filed an affidavit dated 22.12.2017 in her individual capacity withdrawing the exemption claimed u/s 10(38) of the I.T. Act. However, in the return filed in response to the notice u/s 148 on 16.9.2019, the assessee did not include the Long-Term Capital Gain by offering to tax. This type of flipflop on the part of the assessee shows that despite knowing fully well that the claim of exemption u/s 10(38) is not correct and is a sham transaction, the assessee did not include the same in the taxable income in the return filed in response to notice u/s 148. Had there been no search in the group cases of M/s. Meenakshi Enterprises Ltd, all these things would not have come to light. If the transaction, according to the assessee, are genuine there was no occasion on the part of the assessee to withdraw the claim by filing an affidavit and thereafter not honoring the same. In view of the above discussion and in view of the detailed discussion by the Assessing Officer as well as the learned CIT (A) on this issue, we are of the considered opinion that it is a fit case for levy of penalty u/s 271(1)(c) of the I.T. Act and it was rightly levied by the Assessing Officer and rightly confirmed by the

learned CIT (A). We therefore, uphold the order of the learned CIT (A) confirming the penalty levied by the Assessing Officer u/s 271(1)(c) and the grounds raised by the assessee are dismissed.

15. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 27th March, 2024

Sd/-	**Sd/-**
(LALIET KUMAR) **JUDICIAL MEMBER**	**(R.K. PANDA)** **VICE-PRESIDENT**

Hyderabad, dated 27th March, 2024

Vinodan/sps

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4	DR, ITAT Hyderabad Benches
5	Guard File

By Order