

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2764/MUM/2023
(Assessment Year: 2007-08)**

**Deputy Commissioner of Income Tax,
Central Circle – 3(4), Mumbai,
Room No. 1915, 19th Floor,
Air India Building, Nariman Point,
Mumbai - 400021**

.....

Appellant

**Bhawanishankar Harishchandra
Sharma,**

Vs

1 Sharma cottage, Near Lake Castle
Building, Powai, Mumbai - 400076
[PAN: ANUPS9315F]

.....

Respondent

Appearance

For the Appellant/Department : Shri Ashok Kumar Ambastha
For the Respondent/Assessee : None

Date

Conclusion of hearing : 18.03.2024
Pronouncement of order : 26.03.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Revenue has challenged the order, dated 29/05/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2007-08, whereby the Ld. CIT(A) allowed the appeal of the Assessee against the Penalty Order, dated 29/03/2018, passed under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Revenue has raised following grounds of appeal:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961 of Rs. 1,08,76,000/- by ignoring the fact that the assessee failed to adhere to the provisions of section 50C(2) of the Income Tax Act, 1961.

2. The appellant craves for leave for Hon'ble Tribunal to alter or amend any or all grounds of appeal before or at the time of hearing. The appellant, therefore, prays that on the ground stated above, the order of the Ld. CIT(A)-51,Mumbai, may be set aside and that of the Assessing Officer restored."

3. The relevant facts in brief are that Assessee filed original return of income for the Assessment Year 2007-08 on 31/07/2007 declaring total income of INR 6,65,30,011/-. Subsequently, a search action under Section 132 of the Act was conducted in the Supreme Infrastructure Group of cases on 24/09/2009 and the Assessee was also covered in the said search action. Notice under Section 153A of the Act was issued to the Assessee on 20/05/2010 and the Assessee filed return on 15/12/2010 declaring total income of INR 6,65,30,011/- The assessment was completed under Section 143(3) read with section 153A of the Act on 29/12/2011 and the total income of the Assessee was assessed at INR 95,92,26,050/-. The Assessee had declared long term capital gain of INR 6,05,32,305/- on sale of land in the return of income which was recomputed by the Assessing Officer at INR 95,32,52,180/- by taking the sale value of the said land at INR 133,12,09,000/- being the value adopted by the Stamp Valuation Authority. In appeal preferred by the Assessee before the CIT(A) against the Assessment Order, dated 29/12/2011, passed under Section 143(3) read with Section 153A of the Act, the CIT(A) directed the Assessing Officer to compute long term capital gain by adopting sale consideration as INR 48,69,53,000/- by placing

reliance on the report of the District Valuation Officer (DVO) instead of the value of INR 133,12,09,000/- adopted by the Assessing Officer as against the consideration of INR 43,84,89,125/- shown by the Assessee. Further, the CIT(A), vide rectification order dated 14/06/2013, directed the Assessing Officer to take the cost of acquisition of land as on 01/04/1981 as INR 2,23,03,200/- determined by the DVO as against the value of INR 6,08,78,000/- adopted by the Assessing Officer. Being aggrieved, the Assessee filed appeal before the Tribunal against the aforesaid order of the CIT(A). The Tribunal, vide order, dated 21/07/2014, restored the matter relating to the fair market value to be adopted as on 01/04/1981 back to the file of the CIT(A). In the restored matter, the CIT(A), vide order, dated 19/01/2017, directed the Assessing Officer not to adopt the Fair Market Value as on 01/04/1981 on the basis of the DVO's Report. Pursuant to the order of CIT(A), the long term capital gain was re-calculated by the Assessing Officer at INR 10,89,96,180/-.

4. Meanwhile, penalty proceedings were also initiated under Section 271(1)(c) of the Act for furnishing inaccurate particulars of income. Vide order, dated 29/03/2018, the Assessing Officer levied penalty of INR 1,08,76,000/- under Section 271(1)(c) of the Act. However, in appeal preferred by the Assessee against the aforesaid order levying of penalty, vide order, dated 29/03/2018, the CIT(A) deleted the penalty levied under Section 271(1)(c) of the Act for furnishing inaccurate particulars of income. The present appeal has been preferred by the Revenue against the aforesaid order of the CIT(A) on the grounds reproduced in paragraph 2 above.
5. We have heard the Ld. Departmental Representative and perused the orders passed by the authorities below.

6. We note that the difference in the computation of capital gain had arisen on account of the difference in the value of sale consideration adopted for the purpose of computation of long term capital gain. The Assessing Officer had initially adopted stamp duty value of INR 133,12,09,000/- as full value of sale consideration. However, the CIT(A) directed the Assessing Officer to adopt the value of INR 48,69,53,000/- determined by the DVO as against the sale consideration of INR 43,84,89,125/- recorded in the sale document. This resulted in increase of the capital gains tax liability by INR 10,89,96,180/-. The Assessing Officer levied penalty of INR 1,08,76,000/- under Section 271(1)(c) of the Act for furnishing inaccurate particulars of income, whereas the CIT(A) deleted the penalty holding as under:

"8.7 From the above facts, it is evident that the addition was made due to consideration of the Stamp Duty Value by the AO as deemed sales consideration. On subsequent reference to DVO, the DVO did not agree with the value adopted by the AO. In fact the DVO determined the fair value of property and the same was much closer to the sale consideration received by the appellant. The difference between the actual sale consideration received and fair value determined by the DVO became the basis of the calculation of the differential tax liability and also the resultant penalty u/s 271(1)(c) of the Act.

*8.8 As regards the levy of penalty on this issue, it is seen that it has been held by various Courts and Tribunals that this cannot be taken as a case of furnishing inaccurate particulars of income inasmuch as there was a registered sale deed and there was consideration mentioned therein. It is seen that the issue has been decided in favour of the assessee by the jurisdictional Hon'ble Bombay High Court in case of **CIT V. Fortune Hotels and Estates (P.) Ltd (52 taxmann.com 330)** where it has been held that just because this ground was raised and therefore, the document was forwarded to the Valuer and for determination of the value, by itself would not mean that the assessee had furnished inaccurate particulars of income or has concealed the income. The Hon'ble Bombay High Court, while dismissing the departmental appeal in this regard held:*

1. Heard Mr. Vimal Gupta, learned Senior Counsel appearing in support of this Appeal, which impugns the order of the Income Tax Appellate Tribunal dated 30.09.2011 allowing the Assessee's Appeal and deleting the penalty under Section 271(1)(c) of the Income Tax Act, 1961. Mr. Vimal Gupta submits that the substantial question of law which arises for determination and consideration is whether, the Tribunal was right in holding that the penalty cannot be imposed with reference to addition of deemed income under Section 50C of the Income Tax Act, 1961. Mr. Vimal Gupta relies upon the judgment of the Honourable Supreme Court in the case of Chuharmal v. CIT [1988] 172 ITR 250/38 Taxman 190 (SC).

2. Upon perusal of the order passed by the Tribunal in its entirety and noting the peculiar facts pertaining to the Assessee we are of the view that the question as posed before us and the contentions advanced need not be gone into in any further details. The admitted factual position and which the Tribunal noted is prevailing throughout. The Assessee was the owner of the office premises at Nariman Point, Mumbai and he sold the same during the year previous to the Assessment Year 2004-2005 and sale consideration was Rs.2 crores. The Assessing Officer noted that the market value adopted by the Registrar of Assurances for levy of stamp duty was Rs.3,72,42,000/-. In view thereof by taking recourse to Section 52C(2) the Assessing Officer called upon the Assessee to show cause as to why the full value of consideration received on transfer should not be adopted as per the stamp valuation. The Assessee insisted that the question of valuation of the property should be referred to the Departmental Valuation Officer. That was so referred and the report was submitted by the Valuation Officer dated 27.12.2006 determining the market value of the property at Rs.2,70,03,920/-. The Assessee maintained that the value of Rs.2 crores is actual sale consideration received by it. However, this was not accepted and the difference between the consideration received and determination of the Valuation Officer was declared as tax liability.

3. To this extent there is no dispute and what later on followed was the imposition of penalty. The Tribunal held that this cannot be taken as a case of furnishing inaccurate particulars of income inasmuch as there was a registered sale deed and there was consideration mentioned therein. That ground was raised and

therefore, the document was forwarded to the Valuer and for determination of the value, by itself would not mean that the Assessee had furnished inaccurate particulars of income or has concealed the income. In these peculiar circumstances the imposition of penalty was not justified, is the conclusion drawn. The larger question posed for our consideration by Mr.Vimal Gupta really does not arise in the peculiar facts of the case. We leave that question and contentions based thereon open for being canvassed in an appropriate case. The Tribunal's order even if containing any reference to some deeming provision will not preclude or prevent the Revenue from raising such contentions. With this clarification and finding that the Tribunal's order does not raise any substantial question of law that we proceed to dismiss the Appeal. It is, accordingly, dismissed. No costs.

8.9 It is further seen that similar view was also taken by the Hon'ble Mumbai ITAT in the case of Renu Hingorani v ACIT (ITA No. 2210/Mum/2010) where it was held that the addition made under the deeming provisions of the Income Tax Act 1961 like section 50C cannot lead to the inference that the assessee had furnished inaccurate particulars of income. The relevant extracts of the order are as under:

"We have considered the rival contentions and relevant record. We find that the AO had made addition of Rs. 9,00,824/- being difference between the sale consideration as per sale agreement and the valuation made by the Stamp Valuation Authority. Thus, the addition has been made by the AO by applying the provisions of section 50C of the Act. It is evident from the assessment order that the AO has not questioned the actual consideration received by the assessee but the addition is made purely on the basis of deeming provisions of the Income Tax Act, 1961. The AO has not given any finding that the actual sale consideration is more than the sale consideration admitted and mentioned in the sale agreement. Thus, it does not amount to concealment of income or furnishing inaccurate particulars of income. It is also not the case of the revenue that the assessee has failed to furnish the relevant record as called by the AO to disclose the primary facts. The assessee has furnished all the relevant facts. documents-/material including the sale agreement and the AO has not doubted the genuineness and validity of the documents produced before him and the sale consideration received by the assessee.

Under these facts and circumstances, it cannot be said that the assessee has not furnished correct particulars of income. Merely because the assessee agreed for addition on the basis of valuation made by the Stamp Valuation Authority would not be a conclusive proof that the sale consideration as per this agreement was incorrect and wrong. Accordingly the addition because of the deeming provisions does not ipso facto attract the penalty u/s 271(1)(c)."

8.10 In view of the binding judgments of the Hon'ble Bombay High Court and the Hon'ble Mumbai ITAT, it is clear that only because addition was made under the deeming provisions like section 50C of the Act, it cannot be construed that the assessee had filed inaccurate particulars of income. In fact in the present case the Stamp Duty Value adopted by the AO was not accepted by the DVO itself who adopted a value as the Fair Market Value which was much less than the Stamp Duty Value adopted by the AO. The AO has also not given any finding that the actual sale consideration was more than the sale consideration mentioned in the sale agreement. On the other hand the assessee has furnished all the relevant facts, documents and material and the AO has not doubted the genuineness of the documents produced before him and the sale consideration received by the assessee. Accordingly, the addition made under the deeming provisions of section 50C of the Act in the present case would not attract levy of penalty u/s 271(1)(c) of the Act.

8.11 Thus, considering the facts of the case and the binding judicial pronouncements of the jurisdictional Hon'ble High Court and the jurisdictional Hon'ble ITAT, I direct the Assessing Officer to delete the impugned penalty of Rs. 1,08,76,000/- levied on the assessee u/s 271(1)(c) of the Act. Therefore, these grounds of appeal are allowed."

7. On perusal of the order passed by the CIT(A), we are of the view that the CIT(A) has passed a well reasoned order deleting the levy of penalty. We note that while deleting penalty, the CIT(A) had placed reliance on the binding judgment of the Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Fortune Hotels and Estate (P.) Ltd.: [2014] 52 taxmann.com 330 (Bombay) wherein, after taking into account the facts of that case, the Hon'ble Bombay High Court had confirmed the order of the Tribunal deleting penalty

under Section 271(1)(c) of the Act levied in identical facts and circumstances while leaving the larger question open for adjudication. On perusal of record we find that the facts and circumstances prevailing in the present case are identical to the case before the Hon'ble Bombay High Court and therefore, the aforesaid judgment would apply to the present case. In the present case the Assessee had accurately disclosed/furnished all material information/details in the return of income as well as during the assessment proceedings. The Assessing Officer has neither doubted the genuineness of the documents produced before him nor the amount of sale consideration received by the Assessee. The Assessing Officer has also not pointed out any infirmity in the information/documents furnished by the Assessee. Further, it is not the case where the DVO accepted the stamp duty value adopted by the Assessing Officer as the correct fair market value. The fair market value determined by the DVO was much lower than the stamp duty value, and was closer to the stated sale consideration. The Assessing Officer was finally required to adopt the value of INR 48,69,53,000/- determined by the DVO instead of stamp duty valuation of INR 133,12,09,000/- initially adopted by the Assessing Officer. Thus, the increase in tax liability was on account of the difference in stated/actual sale consideration and the fair market value estimated by the DVO, which was substituted for the stated/actual sale consideration in view of the deeming provisions contained in Section 50C of the Act for the purpose of computing the capital gains. Thus, in the present case it cannot be said that the particulars of income furnished by the Assessee were inaccurate. Accordingly, in view of the aforesaid and taking into account the facts & circumstances of the present case, we do not find any infirmity in the order passed by the CIT(A) deleting penalty of INR

1,08,76,000/- levied by the Assessing Officer under Section 271(1)(c) of the Act. Accordingly Ground 1 & 2 raised by the Revenue are dismissed.

8. In result, the present appeal preferred by the Revenue is dismissed.

Order pronounced on 26.03.2024.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 26.03.2024
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai