

**।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**PUNE BENCHES "B" :: PUNE**

**BEFORE DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**  
**AND**  
**SHRI VINAY BHAMORE, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.681/PUN/2024**  
**निर्धारण वर्ष / Assessment Year: 2015-16**

Shital Pravin Jaikrishnia, 37 38 39 40, Aditya Avenue, Tidke Colony, Nashik – 422002.	V s	The Income Tax Officer, Ward-1(3), Nashik.
PAN: ADIPJ1793J		
Appellant/Assessee		Respondent /Revenue

Assessee by	Shri Kishor B Phadke – AR
Revenue by	Shri Sourabh Nayak – Addl.CIT-DR
Date of hearing	31/05/2024
Date of pronouncement	04/06/2024

**आदेश/ ORDER**

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

This appeal filed by the Assessee against the order of Ld.Commissioner of Income Tax(Appeals)[NFAC], passed under section 250 of the Income Tax Act, 1961 for A.Y.2015-16 dated 20.02.2024 emanating from the penalty order u/s.271(1)(c) of the Income Tax Act, 1961 dated 13.05.2019. The Assessee has raised the following grounds of appeal :

“1. The learned CIT(A)-NFAC erred in law in law and on facts in confirming the penalty u/s 271(1)(c) of the ITA, 1961 to Rs 10,13,112 (being 100% of tax evaded) as against the penalty of Rs. 20,64,224 (being 200% of tax evaded for concealment of income). The learned I-T authorities ought to have appreciated that there is no any concealment of income.

2. Appellant contends that the learned AO ought to have kept the penalty proceedings in abeyance as the quantum proceedings were still pending with the learned CIT(A) and as such the penalty order is to be set aside.

3. The appellant craves leave to add / modify / delete / amend all / any of the grounds of appeal.”

**Submission of Ld.AR:**

2. Ld.AR filed a paper book. Ld.AR invited our attention to the Order by the Assessing Officer to give effect to the Order of CIT(A) dated 29/03/2024 in quantum appeal. The Ld.AR submitted that after giving effect to the order of the CIT(A) the Income of the assessee is assessed at (-) 1,13,171/-. The Ld.AR submitted that since the quantum addition has been deleted the penalty u/s 271(1)(c) is unsustainable.

**Submission of LD.DR :**

3. Ld.DR accepted that after the order of CIT(A) income of the assessee has been reduced to loss.

**Finding and Analysis:**

4. We have heard both the parties and perused the records. It is mentioned in the assessment order that AO received information that assessee along with Shri Pravin Jaikrishnia sold immovable property for a total consideration of Rs.60,00,000/-. However, cost of the said property for the purpose of stamp duty was at Rs.78,47,000/-. In this case, the Assessing Officer(AO) held that assessee has sold property for a total consideration of Rs.78,47,000/- as per the stamp duty valuation in which assessee's share is Rs.39,23,500/-. The AO invoked section 50C of the Act and made addition of Rs.39,23,500/-. In the assessment order, AO had not considered any deduction for cost of acquisition. Assessee had filed appeal against the addition made by the AO in the assessment order before the Id.CIT(A). Assessee submitted before the Id.CIT(A) that the impugned property was purchased in F.Y.2008-09 for Rs.35,96,794/-. Therefore, the assessee pleaded before the Id.CIT(A) that AO may be directed to allow index cost of acquisition. Ld.CIT(A) vide his order dated 29.03.2024 directed the AO to allow deduction of Index Cost of Acquisition while calculating the capital gain. The AO passed an order giving effect

to the order of Id.CIT(A) on 05.04.2024. The AO in the order giving effect calculated the income of the assessee as under :

<i>Income as per order u/s 144 r.w.s. 147, dated 11.12.2018</i>	:	<i>Rs.39,23,500/-</i>
<i>Less: Relief allowed by the CIT(A), NFAC. (indexed cost of acquisition of Rs.40,36,671/-)</i>	:	<i>Rs.40,36,671/-</i>
<b>Revised Income</b>	:	<b>Rs.(-)1,13,171/-</b>

4.1 However, the AO levied penalty u/sec.271(1)(c) of the Act vide order dated 13.05.2019. Assessee filed appeal against the penalty order before Id.CIT(A).Ld.CIT(A) vide order dated 20.02.2024 reduced the quantum of penalty from 200% which was Rs.20,64,224/- to 100% i.e. Rs.10,32,112/-. Aggrieved by the order of the Id.CIT(A), the assessee filed appeal before this Tribunal.

5. In this case, it is admitted fact that the addition made by AO did not survive after the order of Id.CIT(A). As per the computation of capital gain, there was no taxable capital gain. Therefore, assessee was not liable to file return of income as assessee was not having any taxable capital income or any other taxable income. Since there is no taxable capital gain, there is no concealment of income by assessee. Hence, penalty under section 271(1)(c) for concealment of income is unsustainable.

Accordingly, AO is directed to delete the penalty. Accordingly, appeal of the assessee is allowed.

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

Order pronounced in the open Court on 4<sup>th</sup> June, 2024.

**Sd/-**  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

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

पुणे / Pune; दिनांक / Dated : 4<sup>th</sup> June, 2024/ SGR\*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, “बी” बेंच, पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्डफाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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