

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.129/Ind/2024**  
**Assessment Year: 2010-11**

Rajaram Patidar, H.No.112, Near Ram Lila Maidan, Ward No. 52-53, Misrod	<b>बनाम/ Vs.</b>	Income-tax Officer, 2(4), Hoshangabad Road, Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
<b>PAN: BKAPP7594R</b>		
Assessee by	Shri Anil Khabya, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	26.06.2024	
Date of Pronouncement	27.06.2024	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 10.01.2024 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of penalty-order dated 29.03.2016 passed by learned ITO-2(4), Bhopal ["AO"] u/s 271(1)(c) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2010-11, the assessee has filed this appeal.

2. Heard the learned Representatives of both sides and case records perused.

3. The background facts of the case are such that the assessee filed return of AY 2010-11 on 12.12.2011 declaring a total income of Rs. 1,00,000/- from rent of tractor and agricultural income of Rs. 75,000/-. The case was selected for scrutiny vide notice dated 13.08.2012/05.09.2012 u/s 143(2) and the AO ultimately passed assessment-order dated 25.03.2013 determining total income at Rs. 4,53,11,710/- after making additions of (i) Rs. 3,96,04,934/- on account of undisclosed long-term capital gain from sale of properties, (ii) Rs. 1,06,772/- on account of undisclosed interest income and (ii) Rs. 55,00,000/- on account of unexplained cash-credit. The AO, however, accepted agricultural income declared by assessee. The assessee carried matter in first-appeal whereupon the CIT(A) confirmed additions to the extent of (i) Rs. 2,92,60,829/- on account of long-term capital gain and (ii) Rs. 1,06,772/- on account of interest income. The assessee then carried matter to next level before ITAT in *ITA No. 371/Ind/2015* which the ITAT decided vide order dated 28.09.2018. Ld. AR submitted that the ITAT has allowed further relief to assessee and after ITAT's order, the only additions surviving in assessee's case are (i) Rs. 6,26,256/- on account of long-term capital gain and (ii) Rs. 1,06,772/- on account of interest income. This is the final status of quantum proceeding in assessee's case.

4. Ld. AR next explained the penalty matter of assessee with which we are precisely concerned in present appeal. The AO imposed penalty of Rs. 60,50,000/- u/s 271(1)(c) vide order dated 29.03.2016 *qua* the additions confirmed by CIT(A) treating the same as income concealed by assessee. The assessee challenged penalty-order before CIT(A). The CIT(A) has decided assessee's appeal vide order 10.01.2024 and upheld the penalty of Rs. 60,50,000/- imposed by AO.

5. Presently, the assessee is in appeal before us assailing the penalty of Rs. 60,50,000/- imposed by AO and upheld by CIT(A). The grievance of assessee can be segregated in two parts, namely (A) the penalty *qua* the relief already granted by ITAT in quantum-proceeding is not to be sustained, and (B) the remaining penalty *qua* the additions of (i) Rs. 6,26,256/- on account of long-term capital gain and (ii) Rs. 1,06,772/- on account of interest income, surviving even after ITAT's order, should also be deleted on merit.

6. So far as the first part of assessee's grievance is concerned, we agree that the penalty u/s 271(1)(c) is not sustainable *qua* the relief already granted by ITAT in quantum-proceeding because the very basis of imposition of penalty has collapsed to that extent. Therefore, the AO is directed to delete penalty to that extent. This deletion is, however, subject to the rider that if the revenue is in further appeal before High Court against the quantum deleted by ITAT and the ITAT's order is reversed, the revenue shall have power to revive the penalty in accordance with law.

7. Coming to second part of assessee's grievance, learned representative of both sides made their respective contentions against and in support of penalty. We present below our analysis and adjudication:

7.1 Penalty qua the long-term capital gain of Rs. 6,26,256/-:

(i) Ld. AR for assessee submitted that the impugned capital gain was derived by assessee from sale of agricultural land but the resultant capital gain was not declared in the original return of assessee by assessee's counsel who filed the return under the impression that after claiming exemption u/s 54B in respect of investment made in new lands, the assessee would not have any taxable gain. But subsequently during scrutiny-proceeding, when the assessee made re-working and realized that there remained a taxable gain of Rs. 3,85,258/- even after exemption u/s 54B, the assessee offered the same by means of a revised return and paid tax on 07.11.2012 but the AO did not take cognizance of assessee's revised return treating the same as invalid having been filed beyond statutory time for filing of revised return. Further, the assessee computed capital gain by adopting estimating cost at fair market value as on 01.04.1981 @ Rs. 5 lakh/ hectare but the same was finally upheld by ITAT @ Rs. 1 lakh/hectare in Para 30 of ITAT's order, this has resulted in a difference of Rs. 2,40,998/- in computation of taxable gain. This way, the aggregate of Rs. 3,85,258/- offered by assessee in revised return (+) the difference of Rs. 2,40,998/- relating to estimation difference of fair market value as on 01.04.1981, represents the amount of impugned addition of Rs. 6,26,256/- surviving in

the end. Having explained this factual matrix, Ld. AR submitted that the assessee has himself offered capital gain in revised return and also paid tax *suo motu* although the revised return was not within statutory time. Further, the difference of Rs. 2,40,998/- is an estimation difference only. Therefore, there is no concealment by assessee and the penalty should not have been imposed.

(ii) Per contra, Ld. DR for revenue strongly opposed the submissions of Ld. AR. He submitted that it is an admitted fact that the revised return was filed after expiry of statutory time-limit, hence the AO is very much correct in rejecting the same as invalid return. Then, he drew our attention to the following para of assessment-order:

*"2.1 During the period under consideration, the assessee has offered income of Rs. 1,00,000/- in the return of income claiming the same to have been received as rent of tractor owned by him. He has also offered agricultural income of Rs. 75,000/-. As per AIR information available in the case of the assessee he has sold two immovable properties on 22.12.2009 and 04.02.2010 having fair market value on the date of transfer determined by the Stamp Duty Authority as Rs. 1,04,82,500/- and Rs. 41,82,200/- respectively. The assessee has neither disclosed sale of immovable properties nor offered any income under the head Short/Long Term Capital Gain. Vide order sheet entry dated 12.09.2012, the assessee was asked to furnish details of sale of immovable properties during the period under consideration. He was further asked to furnish working of Short/Long Term Capital Gain in respect of such transactions alongwith copies of registered sale deeds and purchase deeds."*

Referring to same, Ld. AR submitted that the notings made by AO clearly show that (i) the department received information of sale transactions of immovable properties made by assessee from AIR database and (ii) it is only when the AO questioned assessee vide order-sheet entry dated 12.09.2012 to furnish the details of those sale transactions and to furnish the working of capital gain that the assessee came out with filing of revised return on 07.11.2012 and offer resultant capital gain to department. Therefore, the assessee has not made any voluntary disclosure, in fact the assessee concealed taxable gain in original return. Ld. DR further relied upon certain decisions to contend that the Hon'ble Courts have upheld imposition of penalty in such a situation. The most important judgement relied by Ld. DR is ***CIT Vs. NG Technologies Ltd. (2015) 57 Taxmann.com 389 (Delhi)*** wherein it was held thus:

*“20. Therefore, it is clear to us that the assessee had not filed revised return voluntarily but had filed the revised return after the Assessing Officer confronted the assessee and they were asked to explain how and why the loss on account of sale of fixed assets was claimed in the profit and loss account. The said loss, capital in nature and could not have been claimed in the profit and loss account.*

*21. In view of the aforesaid discussion, we answer the substantial question of law in favour of the Revenue and against the respondent-assessee. We uphold levy of penalty by the AO u/s 271(1)(c) of the Act. The appeal is disposed of. No costs.*

Ld. AR pointed out that the assessee's SLP against the decision of Hon'ble Delhi High Court is already dismissed by Hon'ble Supreme Court vide order dated 18.04.2016 as reported in **(2016) 70 taxmann.com 37 (SC)**.

(iii) In rejoinder, Ld. AR submitted that the levy of penalty is not mandatory in all cases. He submitted that the fact remains that the assessee submitted a revised return, paid tax before filing such return and informed to the AO during scrutiny-proceeding. He further submitted that the addition finally remaining is much less compared to the entire addition made by AO. Considering these aspects, the assessee should be absolved from penalty.

(iv) We have considered rival submissions of both sides and perused the documents to which our attention has been drawn. It is a fact that the assessee filed original return just declaring a rental income of Rs. 1,00,000/- from tractor and an agricultural income of Rs. 75,000/-. The assessee did not declare capital gain earned from sale of properties in such return. It is further a fact that the department received information of sale of properties by assessee from AIR and when the AO questioned the assessee for the transactions reported in AIR vide order-sheet dated 12.09.2012, only thereafter the assessee filed a revised return declaring capital gain and paying tax thereon. From these facts, one can only find that the assessee has not voluntarily filed revised return but had filed the same only after the AO confronted the assessee. Therefore, the assessee's case is straightaway covered by decision of Hon'ble Delhi High Court in **CIT Vs. NG**

*Technologies Ltd. (supra)* as approved by Hon'ble Supreme Court by rejecting assessee's SLP. In fact, the assessee's case is more worse for the reason that the revised return filed by assessee was also not a valid return. Therefore, in the light of this decision, the penalty imposed by AO qua the capital gain deserves to be upheld. Other pleading made by Ld. AR are not legal and do not impress us. However, we find that out of the addition of Rs. 6,26,256/-, one part of Rs. 2,40,998/- is attributable to the estimation-difference of fair market value as on 01.04.1981 for which the ITAT has also observed in their quantum-order thus:

*"30.....In the given facts and circumstances of the case and being fair to both the parties, we are of the view that cost of acquisition for 1.647 acres should be adopted ....."*

Therefore, the addition of Rs. 2,40,998/- is a result of a fair view taken by ITAT in the matter of estimation and hence to that extent, it should not be considered as concealment. Being so, we hereby come to the conclusion that penalty is sustainable for first component of Rs. 3,85,258/- but not for other component of Rs. 2,40,998/-. We hold accordingly.

7.2 Penalty qua the undisclosed interest income of Rs. 1,06,772/-:

The basic fact of interest income is also same that it was not declared by assessee in original return and it was subsequently declared in an invalid revised return. Ld. AR for assessee only submitted that unlike in capital gain, the issue of interest income was not raised by AO in the order-sheet

dated 12.09.2012 and the assessee has voluntarily disclosed interest income in revised return. However, it is culled out from assessment-order that the assessee received sale-proceeds of immovable properties through cheques in his bank account (Para 2.5 of assessment-order) and the impugned interest income is also from bank accounts (Para 3.1 of assessment-order). Therefore, it can be discerned that when the AO, vide order-sheet entry dated 12.09.2012, questioned the assessee to explain the transactions of sale of immovable properties, the assessee had to declare not only capital gain but also interest from banks in the revised return. Therefore, the plea of Ld. AR that the declaration of interest income was voluntary is not acceptable and the same is rejected. Consequently, the imposition of penalty qua the interest income is hereby upheld.

8. In view of above discussions, our final adjudication is summed up thus:

- (a) The penalty qua the relief granted by ITAT in quantum-proceeding is hereby deleted with the rider that if ITAT's order is reversed by a higher forum, the revenue shall have power to revive the penalty in accordance with law.
- (b) The penalty qua the addition of Rs. 3,85,258/- on account of capital gain is upheld but the penalty for addition of Rs. 2,40,998/- relating to estimation difference in capital gain is deleted.

- (c) The penalty qua the addition of Rs. 1,06,772/- on account of undisclosed interest income is upheld.

**9. Resultantly, this appeal is partly allowed as indicated above.**

Order pronounced in open court on 27.06.2024

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 27.06.2024  
CPU/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order  
Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore