

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

**Before Shri Laliet Kumar, Judicial Member**  
**And**  
**Shri Manjunatha, G. Accountant Member**

आ.अपी.सं / **ITA No.635/Hyd/2022 & SA No.49/Hyd/2023**  
(निर्धारण वर्ष/Assessment Year: 2015-16)

Shri Sarat Gopal Boppana Hyderabad PAN:AFCPB8083K (Appellant)	Vs.	Asstt. C. I. T. Central Circle 2(3) Hyderabad (Respondent)
निर्धारिती द्वारा/Assessee by:		Shri P Murali Mohan Rao CA
राजस्व द्वारा/Revenue by:		Shri Shakeer Ahmed, DR
सुनवाई की तारीख/Date of hearing:		19/06/2024
घोषणा की तारीख/Pronouncement:		07/08/2024

**आदेश/ORDER**

**Per Manjunatha, G. A.M**

This appeal and Stay Application filed by the assessee are directed against the order dated 30.09.2022 of the learned CIT (A)-12, Hyderabad, relating to A.Y.2015-16.

2. The assessee has raised the following grounds:

*"1. On the facts and in the circumstances of the case the order passed by the CIT(A) is erroneous both on facts and in law.*

*2. The Ld. CIT(A) ought to have appreciated that the Ld. AO erred in passing order u/s. 271(1)(c) of the Act, without fairly examining and judiciously considering the replies submitted by the assessee during the course of penalty proceedings.*

*3. The Ld. CIT(A) ought to have appreciated that the Ld. AO erred in passing order u/s. 271(1)(c) of the Act without appreciating the fact that assessee has not made any willful attempt to evade tax and there is no concealment of income, except by ignorance of law position which got rectified by filing the return of income.*

*4. The Ld. CIT(A) ought to have appreciated that the Ld. AO erred in passing order u/s 271(1)(c) of the Act by levying penalty when the appellant has neither resorted to concealment of income nor furnished inaccurate particulars of income.*

*5. The Ld. CIT(A) ought to have appreciated that the non-admission of short-term capital gain in the original return of income is on account of misnomer and difference of opinion as also ignorance of the latest law positions.*

*6. The appellant may add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.”*

3. The brief facts of the case are that the assessee is an individual and derives income from capital gain and income from other sources. The assessee had filed his original return of income u/s 139(1) of the I.T. Act, 1961 on 30.08.2015 declaring total income of Rs.4,41,180/-. A search & seizure operation u/s 132 of the I.T. Act, 1961 was conducted on the assessee as part of the search conducted on M/s. Skill Promoters Pvt. Ltd. Consequent to search notice u/s 153A was issued. In response to notice u/s 153A of the Act, the assessee filed his return of income on 19.02.2021 declaring total income of Rs.1,88,29,210/-. The

assessment has been completed u/s 143(3) r.w.s. 153A on 25.09.2021 and accepted the income returned by the assessee without any further addition to income.

4. Thereafter, penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 was initiated and notice u/s 274 r.w.s. 271(1)(c) of the Act was issued and called upon the assessee to explain as to why the penalty cannot be levied u/s 271(1)(c) r.w. Explanation 5A of section 271(1)(c) thereto. During the penalty proceedings the Assessing Officer observed that, during the PO operation at the residential premises of the assessee on 3.12.2019, a document bearing page Nos. 305 to 327 was found and seized. The assessee was asked about the transaction, for which a statement was recorded u/s 131 of the I.T. Act, 1961 on 9.12.2019. In statement, the assessee stated that he has sold property for a consideration of Rs.2,15,49,330 and also received a sum of Rs.98,69,330/- in cash. However, no capital gain was offered for taxation in respect of the sale of the above property in the return of income filed for A.Y 2015-16. The assessee admitted undisclosed income of Rs.1,83,88,030/- and also included in his return of income filed u/s 153A of the I.T. Act, 1961. Therefore, opined that the assessee has concealed particulars of income which fall under Explanation 5A, which is applicable for a search initiated u/s 132 on or after 1.6.2007 and shall be considered as deemed to have concealed the particulars of income. Therefore, called upon the assessee to explain as to why penalty shall not be

levied. In response, the assessee submitted that he has not willfully concealed particulars of income. Further, although the seized document denotes only sale consideration but not cash consideration as agreed but to buy peace, the appellant has admitted additional income of Rs.1,83,88,030/- towards Short-Term Capital Gain derived from the sale of property. Since the appellant has offered additional income to buy peace, no penalty can be levied.

5. The Assessing Officer however, was not satisfied with the explanation furnished by the assessee and according to the Assessing Officer, the case of the assessee fall under Explanation 5A of section 271(1)(C) of the Act, where it has been clearly stated that notwithstanding that such income is declared by him in any return of income furnished on or after the date of search, if the assessee is found to be owner of any income based on the document found during the course of search initiated u/s 132 of the I.T. Act, 1961 on or after 1.6.2007, he shall be deemed to have concealed his particulars of income. Therefore, opined that although the appellant have admitted additional income in the return of income filed u/s 153A, but additional income declared by the assessee fall under deemed concealment and thus, opined that it is a fit case for levy of penalty u/s 271(1)(c) of the I.T. Act, 1961. Thus, rejected the explanation of the assessee and levied penalty of Rs.62,08,225/- being 100% tax sought to be evaded.

6. Being aggrieved by the penalty order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee reiterated his arguments taken before the Assessing Officer and submitted that voluntary surrender of income cannot be treated as willful concealment of income within the meaning of Explanation 5A of section 271(1)(c) of the I.T. Act, 1961. The assessee further contended that the appellant has declared additional income to buy peace even though the seized document does not show cash received over and above the seized document. Therefore, voluntary surrender of income cannot be treated as concealment of income. The learned CIT (A) after considering the submission and also taken note of relevant facts opined that the appellant has concealed the particulars of Short-Term Capital Gain of Rs.1,83,88,030 and said concealment shall be deemed concealment as per Explanation 5A of section 271(1)(c) of the I.T. Act, 1961 and thus, rejected the explanation furnished by the assessee and sustained penalty levied by the Assessing Officer.

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

8. The learned Counsel for the assessee referring to the assessment order passed by the Assessing Officer u/s 143(3) r.w.s. 153A of the I.T. Act, 1961 submitted that, the Assessing Officer has accepted the income declared by the assessee in the

return of income filed u/s 153A of the Act, without any modification and thus once there is no difference between the returned income and assessed income, the question of concealment of income as contemplated u/s 271(1)(c) of the Act does not arise. The learned Counsel for the assessee further referring to the decision of the Hon'ble Gujarat High Court in the case of Kirit Dahayabhai Patel vs. ACIT reported in (2017) 80 Taxmann.com 162 submitted that the return of income filed in response to notice u/s 153A is to be considered as return filed u/s 139 of the Act and penalty has to be levied on income assessed over and above income returned u/s 153A, if any. The learned Counsel for the assessee further referring to decision of the Hon'ble Supreme Court in the case of CIT vs. Suresh Chandra Mittal, [2001] 251 ITR 9 (S.C) submitted that voluntary surrender of income in good faith cannot be considered as concealment of income. Therefore, he submitted that the Assessing Officer and the learned CIT (A) erred in sustaining the penalty levied u/s 271(1)(c) of the I.T. Act, 1961.

9. The learned DR, on the other hand, supporting the orders of the authorities below submitted that, it is a fit case for invoking Explanation 5A of section 271 (1)(c) of the Act, as there is a deemed concealment of income on account of non-disclosure of Short-Term Capital Gain from sale of property in the original return filed u/s 139(1) of the I.T. Act, 1961. Although, the assessee disclosed Short-Term Capital Gain in subsequent return

filed u/s 153A of the Act, but as per Explanation 5A, it fall under deemed concealment and penalty is leviabale. The Assessing Officer after considering the relevant fact has rightly levied the penalty and thus, the order of the learned CIT (A) in sustaining the penalty levied by the Assessing Officer should be upheld.

10. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the assessee had admitted additional income towards Short-Term Capital Gain derived from sale of property at Rs.1,83,88,030/- in the return of income filed u/s 153A of the I.T. Act, 1961 dated 19.2.2021. Further, the said capital gain was not offered in the return of income filed u/s 139(1) of the Act on 30.08.2015. It is also an admitted fact that although the Assessing Officer has stated that the said capital gain was offered on the basis of incriminating material found during the course of search, but on perusal of relevant material seized during the course of search in page 305 to 327 of the Paper Book, we find that the incriminating material found relates to copies of sale deed and copies of agreement of sale cum GPA and as per the said document, there is no reference of any cash received to the tune of Rs.1,98,69,330/- as claimed by the Assessing Officer and also admitted by the assessee in the statement recorded u/s 131 of the I.T. Act, 1961 dated 9.12.2019. Therefore, the penalty levied by the Assessing Officer u/s 271(1)(c) of the I.T. Act, 1961 and

Explanation 5A provided therein, should be examined in light of relevant incriminating material, statement recorded from the assessee and return of income filed in response to notice u/s 153A of the Act.

11. As per the provisions of section 153A(1)(a), any return filed in response to section 153A of the Act shall be treated as if, such returns were a return required to be furnished u/s 139 of the I.T. Act, 1961 and the provisions of this Act shall, so far as may be applicable accordingly. In other words, any return filed u/s 153A of the I.T. Act, 1961 is to be considered as return filed u/s 139 for the purpose of penalty u/s 271(1)(c) of the Act and as per the said return, if the assessed income and the returned income is one and the same or there is no difference between the income returned by the assessee and income assessed by the Assessing Officer, then for the purpose of section 271(1)(c) of the Act, it can be said that there is no concealment of income. This legal proposition is supported by the decision of the Hon'ble Gujarat High Court in the case of Kirit Dahayabhai Patel vs. ACIT (Supra) where it has been clearly held that in view of the specific provision of section 153A, the return of income filed in response to notice u/s 153A is to be considered as return filed u/s 139, as the Assessing Officer has made assessment on the said return and therefore, the return is to be considered for the purpose of penalty u/s 271(1)(c) of the Act and penalty is to be levied on the income assessed over and above the income returned u/s 153A, if

any. In the present case, there is no difference between the income returned by the assessee u/s 153A and income assessed by the Assessing Officer u/s 143(3) r.w.s. 153A order dated 25.9.2021. Since the Assessing Officer has accepted the return of income filed by the assessee without any addition towards capital gain, in our considered view, for the purpose of section 271(1)(c) of the I.T. Act, 1961, it can be said there is no concealment of income and penalty cannot be levied u/s 271(1)(c) of the Act.

12. Be that as it may, coming back to another aspect of the issue. Admittedly, additional income declared by the assessee towards Short-Term Capital Gain derived from sale of property is not based on any incriminating material. Although the Assessing Officer refer to page 305 to 327 of the seized material, but on perusal of the said seized material, we find that those documents are copies of sale deed documents and sale agreement and as per the said documents, there is no reference of any consideration received in cash. Although the seized material does not show any undisclosed income on account of Short-Term Capital Gain derived from sale of property, but the assessee has admitted additional income of Rs.1,83,88,030/- voluntarily to buy peace and to cooperate with the Department with an understanding that the Assessing Officer would not levy penalty u/s 271(1)(c) of the Act. In our considered view, when the appellant has voluntarily surrendered income in good faith to buy peace and to cooperate with the Department, the said voluntary surrender of income

cannot be considered as concealment of income. The Assessing Officer in the present case had not discharged its burden of proving its concealment and had simply made a conclusion on the assessee for voluntary surrender of income in good faith and voluntary surrender does not fall under deemed concealment as provided in Explanation 5A to section 271(1)(c) of the I.T. Act, 1961 and this principle is supported by the decision of the Hon'ble Supreme Court in the case of CIT vs. Suresh Chand Mittal (Supra). Therefore, we are of the considered view that on this count also, penalty levied by the Assessing Officer u/s 271(1)(c) cannot be sustained.

13. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the Assessing Officer is erred in levy of penalty u/s 271(1)(c) by invoking the provisions of section 271(1)(c) and Explanation 5A provided therein. The learned CIT (A) without appreciating the relevant facts has simply sustained the penalty levied by the Assessing Officer. Thus, we set aside the order passed by the learned CIT (A) and direct the Assessing Officer to delete the penalty levied u/s 271(1)(c) of the I.T. Act, 1961.

14. In the result, appeal filed by the assessee is allowed.

**SA No.49/Hyd/2023**

15. We have already allowed the appeal filed by the assessee in assessee's appeal in ITA No.635/Hyd/2022, and

therefore, the stay application filed by the assessee in SA No.49/Hyd/2023 become infructuous. Thus, we dismiss the stay application filed by the assessee.

16. To sum up, the appeal filed by the assessee is allowed and the S.A filed by the assessee is dismissed.

Order pronounced in the Open Court on 7<sup>th</sup> August, 2024.

Sd/- <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	Sd/- <b>(MANJUNATHA, G.)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 7<sup>th</sup> August, 2024

*Vinodan/sps*

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4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*