

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "D" Bench, Mumbai.

Before Shri Satbeer Singh Godara (JM) & Shri Girish Agrawal (AM)

I.T.A. No. 3892/Mum/2023 (A.Y. 2014-15)

Mohd. Imtiyaz Fakir Mohd Shaikh 100, Blue Flame Apartment, 40S.V. Road, Bandra West Mumbai-400 050.  PAN : AGPPS6863A (Appellant)	Vs.	ITO, Ward 23(2)(3) Room No. 115 1 <sup>st</sup> Floor Matru Mandir Tardeo Mumbai-400 007.  (Respondent)
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Assessee by	None
Department by	Smt. Mahita Nair
Date of Hearing	01.07.2024
Date of Pronouncement	10.07.2024

ORDER

Per Satbeer Singh Godara (JM) :-

This assessee's appeal for A.Y. 2014-15, arises against the National Faceless Appeal Centre, "NFAC" Delhi's Din and order No. ITBA/NFAC/S/250/2023-24/1057075127(1) dated 16.10.2023 in proceedings under section 271(1)(c) of the Income Tax Act 1961; in short "the Act".

Case called twice. None appears at assessee's behest. We accordingly proceeds ex-parte against him.

2. It emerges during the course of hearing that with the able assistance coming from the Revenue side that both the learned lower authorities have imposed section 271(1)(c) penalty amounting to Rs. 986,941 pertaining to assessee's corresponding 'quantum' additions of short term capital gains, section 56(2)(vii) and section 69C unexplained investment involving Rs. 21,72,253/-, Rs. 11,28,405, Rs. 460,000/- respectively, made in the course

of assessment dated 26.12.2016. The said assessment appears to have finality since there is no material contrary to this effect in the case file.

3. Mrs. Nair vehemently supported the impugned penalty and submitted that both the learned lower authorities have rightly treated the above three quantum addition(s) as an instance of furnishing of inaccurate particulars of income under section 271(1)(c) of the Act.

4. We notice in this factual backdrop that the formal twin quantum additions herein additions represent the difference between actual sale/purchase considerations vis-à-vis stamp valuation thereof, wherein latter amount(s) stand adopted for computing capital gains and income from 'other' sources; under section 50C and section 56(2)(vii) of the Act, respectively. There is no material in the case file which could suggest that the assessee had either received or paid anything over and above the former actual sale/purchase price stated in the relevant agreements. It is thus a case wherein learned lower authorities have wrongly treated the stamp valuation rate of the correspondence between sale and purchase transaction as inaccurate particulars submitted by the assessee.

5. The factual position is hardly any different qua the third quantum addition of unexplained investment wherein the assessee could not substantiate his explanation proving sources thereof in the assessment proceedings. It is in these peculiar facts that we deem it appropriate to quote CIT Vs. Reliance Petroproducts P. Ltd. (2010)322 ITR 158 (SC) that quantum and penalty are parallel proceedings wherein each and every disallowance/addition made in course of the former does not ipso facto attract the latter provision, to delete the impugned penalty in very terms. Ordered accordingly.

6. This assessee's appeal is allowed.

Order pronounced in the open court on 10<sup>th</sup> July, 2024.

Sd/-  
(Girish Agrawal)  
Accountant Member

Sd/-  
(Satbeer Singh Godara)  
Judicial Member

Mumbai : 10.07.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai