

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER  
आयकर अपील सं./ITA No.409/SRT/2024**

**(Assessment Year: 2013-14)**

**(Hybrid Hearing)**

Arvindbhai Nanjibhai Buha, 37, Nirmal Nagar Society, Sarthana Jakatnaka, Surat - 395006	<b>Vs.</b>	The ACIT, Central Circle – 2, Surat
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFSPB8998R</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Ashwin K. Parekh, CA
<b>Respondent by</b>	Shri Vinod Kumar, Sr. DR
<b>Date of Hearing</b>	08/07/2024
<b>Date of Pronouncement</b>	27/08/2024

**आदेश / O R D E R**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal by the assessee, emanates from the order passed under section 250 of the Income-tax Act [in short, 'the Act'] of the Learned Commissioner of Income-tax (Appeals) - 4, Surat [in short, 'the Ld.CIT(A)'], dated 28.03.2024 for the assessment year (AY) 2013-14.

2. The grounds of appeal raised by the assessee are as follow:

*"1. The Learned Commissioner of Income-tax (Appeals) has grievously erred in law and on facts in confirming penalty u/s. 271(1)(c) of the Act levied by Assessing Officer without appreciating the detailed submission explaining the non-levy of penalty with evidences. The penalty of Rs. 7,67,754/- should therefore be deleted.*

*2. The Learned Commissioner of Income-tax (Appeals) has grievously erred in law and on facts in confirming penalty u/s. 271(1)(c) of the Act levied by Assessing Officer on the Addition of Rs. 27,00,128/- on account of deduction u/s. 54B of the Act without appreciating the facts that Long Term Capital Gain was*

*taxed as Business Income in assessment order and change of head does not amount to Concealment of Income or furnishing inaccurate particulars of income. The penalty of Rs. 7,59,596/- should therefore be deleted.*

*3. The Learned Commissioner of Income-tax (Appeals) has grievously erred in law and on facts in confirming penalty u/s. 271(1)(c) of the Act levied by Assessing Officer on disallowance of Rs. 29,000/- u/s. 24(b) of the Act on estimated basis determined by CIT(A). The penalty of Rs.8,158/- should therefore be deleted.*

*The appellant reserves the right to add, alter, modify, amend or withdraw any of the grounds of appeal before hearing.”*

3. The facts of the case in brief are that assessee is an individual, driving income from business and agriculture. A search action u/s 132 was carried out on 17.07.2012, in which the assessee was also covered. In response to notice u/s 153A of the Act, assessee filed return of income on 24.12.2014 declaring total income of Rs.5,66,532/- and agricultural income at Rs.3,84,750/-. The assessment u/s 143(3) r.w.s. 153A of the Act was completed on 27.03.2015, determining total income at Rs.42,97,962/-. The AO made four additions on (i) Rs.1,50,000/- on account of deduction u/s 24(b) of the Act, (ii) disallowance of Rs.27,00,128/- on account of deduction claimed u/s 54B of the Act on the capital gain, (iii) disallowance of Rs.3,08,848/- on account of unaccounted jewellery and (iv) disallowance of Rs.5,00,454/- on account of wrong business loss. The assessee claimed a deduction of Rs.1,50,000/- u/s 24(b) for interest on a housing loan. However, upon investigation, it was found that the loan from Tata Capital Financial Services Ltd. was not used for housing but was partially used as investment in partnership firm. The AO noted that the assessee reported a capital gain of Rs.27,00,128/- from selling of land and claimed a deduction u/s

54B at Rs.27,00,218/-, thereby showing 'Nil' income from capital gain. The assessee was involved in regular transaction of purchasing and selling of land and plot, which was considered business income and not capital gain and therefore the deduction of Rs.27,00,128/- claimed u/s 54B of the Act was disallowed and added to the total income of the assessee. Penalty proceedings u/s 271(1)(c) also initiated by AO on 27.03.2015. The assessee filed appeal against the order u/s 143(3) of the Act. After hearing the assessee, Ld. CIT(A) allowed partial relief to the assessee the disallowance u/s 24(b) was reduced from Rs.1,50,000/- to Rs.29,000/-. The disallowance of deduction of Rs.27,00,128/- was sustained. The finding has been given by the Ld. CIT(A) at para 7.1 of his order. He has upheld action of the AO in treating the gain on sale of land as profit and gain from business instead of capital gains claimed by the assessee. The assessee has not filed appeal in the Tribunal against the order of Ld. CIT(A). After receipt of the appellate order, the AO again issued penalty notice u/s 271(a)(c) of the Act on 23.02.2022. The assessee has not filed reply to the penalty notice, therefore the AO levied penalty u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income. He has relied on the decision of the ITAT, Mumbai in the case of Armour Chemicals Ltd. vs. ACIT, in ITA No.309/Mum/2006, dated 26.01.2009 and Dharmendra Textile Processors & Ors., 306 ITR 277 (SC). He has also relied on the decision of Hon'ble Supreme Court in the case of Addl. CIT vs. Jeevanlal Shah, 205 ITR 244 (SC) and K. P. Madhusudan vs. CIT, 251 ITR 99 (SC). He, accordingly, levied minimum penalty @

100% of the tax sought to be evaded. Against the penalty order, assessee filed appeal before Ld. CIT(A) who has dismissed the appeal. The findings of the Ld. CIT(A) is at para 5.2 and 5.3 of the appellate order. Regarding disallowance of Rs.29,000/- u/s 24(b), the Ld. CIT(A) stated that action of the assessee to divert the fund borrowed for housing property towards personal investment cannot be treated as bonafide mistake and therefore, corresponding claim of deduction of Rs.29,000/- was to be treated as furnishing of inaccurate particulars of income. Similarly, action of the appellant to show 'Nil' income under the head of capital gains by claiming deduction u/s 54B also cannot be treated as bonafide mistake because it was not a simple case of change of head of income as claimed by the assessee. He has that it was a case of furnishing inaccurate particulars of income.

4. Aggrieved by the order of Ld. CIT(A), the assessee is in further appeal before this Tribunal. The Learned Authorized Representative (Ld. AR) of the assessee has relied on the submission made by the assessee before the Ld. CIT(A). He submitted that the order u/s 153A r.w.s. 143(3) of the Act were passed on 27.03.2015 and the penalty proceedings u/s 271(1)(c) of the Act were initiated on account of disallowance of deduction u/s 24(b) of Rs.1,50,000/-, addition of long-term capital gain as business income of Rs.27,00,128/- and disallowance of business loss of Rs.5,00,454/-. The Ld. AR submitted that the Ld. CIT(A) deleted the addition of Rs.5,00,454/- on account of business loss and restricted disallowance u/s 24(b) to Rs.29,000/- from Rs.1,50,000/-. The working

of disallowance of Rs.29,000/- carried by Ld.CIT(A) was on estimation basis. The Ld. CIT(A) allowed pro-rata deduction but accepted the fact that expenses were incurred to the extent of Rs.1,50,000/-. This cannot be said to concealment of income or furnishing of inaccurate particulars of income. The assessee has also disclosed full particulars of long-term capital gain in the return of income and therefore, no penalty can be imposed u/s 271(1)(c) of the Act as there has been no concealment of income or filing of inaccurate particulars on the part of the assessee. To support of his claim, the Ld. AR submitted the following decisions, namely, (i) Envision Investment Consultants Vs. ACIT, ITA No.2896/Mum/2017 and (ii) Lavjibhai Dungarbhai Daliya vs. DCIT, IT(SS)A No.85/SRT/2019.

5. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) supported the orders of AO and Ld. CIT(A). He submitted that the submission claimed to have not been considered by AO has been duly considered by the Ld. CIT(A). He further submitted that the assessee has accepted the addition sustained by Ld. CIT(A) and no appeal against such addition was filed before the Tribunal. He stated that the assessee is in the regular business of purchase and sale of land and it has been rightly assessed by AO as business income. The assessee claimed the profit on sale of land as a capital gain because deduction u/s 54F will not be available, if the income is assessed under head of business income. He further submitted that the decision in case of Envision Investment Consultants (supra) is not applicable because the facts are different. In the present case, after making change in the head of the

income, the assessee has claimed deduction u/s 54F which was not the fact in the case relied upon.

6. We have heard rival submission of both the parties and perused the material available on record. We have also gone through the decisions relied upon by both parties. The AO has made four additions out of which two additions have been deleted and disallowance under deduction u/s 24(b) have been reduced from Rs.1,50,000/- to Rs.29,000/- by Ld. CIT(A). However, disallowance of deduction claimed u/s 54B of Rs.27,00,128/- has been sustained by Ld. CIT(A). The AO has levied penalty u/s 271(1)(c) on the above additions, which were sustained by Ld. CIT(A). Penalty was levied because AO was satisfied that assessee furnished inaccurate particulars of income in respect of these two additions. He has relied on the decisions in case of Amrut Chemicals Ltd. (supra) and Dharmendra Textile Processors & Ors. (supra) and K. P. Madhusudan (supra) and levied minimum penalty of Rs.7,67,754/- being 100% of tax sought to be evaded. The order was passed after obtaining approval of Add. CIT. The Ld. CIT(A) has upheld the penalty on both additions by stating that action of the assessee cannot be termed as bonafide mistake.

7. Let us discuss merit of penalty on the above two additions separately. The AO has levied penalty on disallowance of Rs.29,000/- u/s 24(b) of the Act. The assessee has claimed deduction of interest of Rs.1,50,000/- u/s 24(b) of the Act on the housing loan. The AO disallowed the interest by stating that the loan was not used for construction of residential house. However, the Ld. CIT(A) restricted

the addition of Rs.29,000/- after accepting that Rs.25,95,600/- out of loan of Rs.32,00,000/- was used for construction and the remaining amount was invested as capital in the partnership firm. Hence, he sustained proportionate disallowance of Rs.29,000/- out of Rs.1,50,000/-. We are of the view that the assessee has furnished all relevant details, from which proportionate disallowance has been worked out by Id. CIT(A). It is not a case of furnishing inaccurate particulars but a case of claiming full allowance on the loan sanctioned for housing purpose by Tata Financial Services Limited. The Ld. CIT(A) at para 7.1.2 of his order has reproduced the statement of account of Tata Capital Services Ltd. and held that the loan was "Home Equity Finance-Rec". The disallowance has been made because part of the loan was invested by assessee in the partnership firm. It is common knowledge that house not is built in a single day but over a period of time and all the expenses are not incurred in one go. There is no dispute that interest of Rs.1,50,000/- was actually paid by assessee. Therefore, disallowance of a particular sum out of interest paid would not by itself invite levy penalty u/s 271(1)(c) of the Act. If such a view is taken, each and every disallowance would lead to levy of penalty u/s 271(1)(c) of the Act, which certainly could not be the intention of the provision. Therefore, we are of the view that penalty levied by AO on disallowance of Rs.29,000/- u/s 24(b) of the Act is not sustainable. We direct the AO to delete the same.

7.1 The other disallowance pertains to Rs.27,00,128/- being deduction claimed u/s 54B of the Act. The assessee has reported capital gain of

Rs.27,00,128/- from selling of land and claimed deduction of Rs.27,00,128/- u/s 54B, thereby showing 'Nil' income. We find that the assessee is engaged in regular land transactions viz. purchase and sale of land and plots from AY.2007-08 onwards. Hence, the income therefrom was business income u/s 28 and not capital gain u/s 45 of the Act. However, to claim deduction and avoid payment of tax, assessee has shown the profit on sale of land as capital gain and claimed deduction u/s 54B of the Act. Deduction u/s 54B cannot be claimed against business income. It can only be claimed if there is capital gain under Chapter IV-E of the Act. Chapter IV of the Act is in relation to computation of income under different heads of income i.e., A – Salaries, B – Interest on securities (omitted w.e.f. 01.04.1989), C – Income from house property, D – Profits and gains of business or profession, E – Capital gain and F – Income from other sources. As per section 29 of the Act, income from profits and gains of business or profession shall be computed in accordance with provisions contained in sections 30 to 43D of the Act. Therefore, deduction u/s 54B cannot be claimed from profits and gains of business or profession u/s 28/29 of the Act. On the other hand, income from capital gains is under Chapter IV-E of the Act which covers sections 45 to 55A of the Act. As per Section 54B, capital gain on transfer of land used for agricultural purposes is not be charged, if the conditions specified in the said section are fulfilled. Therefore, the assessee would be eligible for deduction u/s 54B, if the profit on sale of land is taxed under the head "Capital Gains" and not under the head income from "profits and gains

from business or profession". In order to take benefit of the Section 54B of the Act, the assessee has deliberately shown the profit from sale of land under the head "Capital Gains" instead of "Profits and gains from business or profession", which was the correct head of income because assessee has been regularly, systematically and with profit motive carrying out the business of land transactions from AY.2007-08 onwards. In view of these facts, the AO and Ld. CIT(A) have rightly held that assessee had "furnished inaccurate particulars of such income" in terms of section 271(1)(c) of the Act. The Ld. AR has relied on the decision in case of Envision Investment Consultants (supra) wherein the ITAT, Mumbai has deleted the penalty. In the said case, penalty was sustained by Ld. CIT(A) on a differential amount of tax resulting from change of head of income from "capital gains" to income from business or profession by AO. The facts in the present case are different. The assessee has not only changed the head of income from business income to capital gain but also claimed deduction u/s 54B and has shown 'Nil' income. It is not a case of differential amount of tax resulting from change of head of income but a case of payment of 'Nil' tax by changing heads of income and claiming deduction u/s 54B of the Act, which was otherwise not available to the assessee. The AO has given a clear finding that assessee was involved in purchase and sale of land and plots on regular basis from 2007-08 onwards. Such assertion has not been negated by the Ld. AR. Therefore, the decision relied upon would not come to the rescue of the assessee. On the other hand, the decisions relied upon by the AO furthers the

cause of revenue. The assessee by showing the profit of sale of land and subsequent deduction u/s 54B of the Act kept a portion of the income from the gaze of the department. Therefore, it is a clear case of “furnishing inaccurate particulars of income” because assessee has deliberately shown the income from land transaction in the impugned case under head “capital gain” to avoid payment of tax, which he was obliged to do. The Hon’ble Supreme Court in the case of Dharmendra Textile Processors & Ors (supra) held that presence of *mens rea* is not required to be established in such matter. The explanations appended to section 271(1)(c) of the Act indicate the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing the return. The penalty under that provision is a civil liability. Willful concealment is not an essential ingredient for attracting civil liability as in the case in the matter of prosecution u/s 276C. Apart from the assessee’s explanation being not bonafide, it is also found that he has not disclosed of the facts which were material to the computation of his income. Hence, the ratio of the decision in case of Hon’ble Supreme Court in T. Ashok Pai vs. CIT, 292 ITR 11 (SC) is also applicable in the present case. In view of these facts and ratio cited supra, penalty levied by the AO in respect of addition of Rs.27,00,128/- due to disallowance u/s 54B is upheld.

8. In the result, penalty levied u/s 271(1)(c) of the Act on addition of Rs.29,000/- u/s 24(b) of the Act is deleted whereas penalty levied u/s 271(1)(c) on disallowance of Rs.27,00,128/- u/s 54B of the Act is upheld.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 27/08/2024 in the open court.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Surat

दिनांक/ Date: 27/08/2024

SAMANTA

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

**// TRUE COPY //**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat