आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA No.591/Ind/2024
Assessment Year: 2013-14

Seema Jain, 73-BA, Scheme No.94, Regency Adrise, Near Bombay Hospital, Vijay Nagar, Indore	**बनाम/** Vs.	ITO 1(1) Indore
(Assessee/Appellant)		(Revenue/Respondent)
PAN: ADTPJ4652K		
Assessee by	Shri Anil Khandelwal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	16.07.2025	
Date of Pronouncement	17.07.2025	

आदेश / O R D E R

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

Feeling aggrieved by order of first appeal dated 13.07.2024 passed by learned Commissioner of Income-tax-National Faceless Appeal Centre, Delhi ["CIT(A)"] which in turn arises out of penalty-order dated 09.12.2021 passed by learned National Faceless Assessment Centre, Delhi ["AO"] u/s 271(1)(c) of Income-tax Act, 1961 ["the Act"] for assessment-year ["AY"] 2013-14, the assessee has filed this appeal on following grounds:

"1.On the facts and in the circumstances of the case Ld. C.I.T. (A) erred in confirming levy of penalty u/s 271(1) (C) on technical breach of section 50C which is not sustainable in law.

2. On the facts and in the circumstances of the case, in the original assessment for A.Y.2013-14 u/s 143(3), the sale deed was on the record of the Ld. A.O. thus well within his knowledge and so motive for concealment of income did not arise for penalty.

3. On the Facts and in the circumstances of the case the Ld. C.I.T (A) failed to realise that it is only a case of reworking or recalculation of long term capital gain on the basis of intimation already on record of the A.O. which does not amount to breach of of section 50C for attracting penalty u/s 271(1)(C).

4. On the facts and in the circumstances of the case the appellant voluntarily in compliance of section 50 C paid additional tax which did not automatically attract the penalty."

2. The background facts leading to present appeal are such that the assessee-individual filed her return of income of relevant AY 2012-13 u/s 139 on 31.10.2013 declaring a total income of Rs. 44,42,012/- consisting of income from business and long-term capital gain from sale of land & godown ["impugned property"]. The assessee calculated the sale consideration of impugned property at Rs. 30,05,000/- and offered taxable long-term capital gain of Rs. 24,46,661/- after deduction of cost. The AO selected assessee's return under scrutiny and issued notices u/s 143(2)/142(1) which were complied by assessee. Finally, the AO passed assessment-order dated 29.01.2016 u/s 143(3) determining total income at Rs. 46,42,012/-. The variation made by AO was on account of disallowance of Rs. 2,00,000/- out of certain expenses claimed by assessee in business

income. The AO, however, accepted the long-term gain of Rs. 24,46,661/- declared by assessee without any change.

2.1 Subsequently, the AO re-opened assessee's case u/s 147 through notice dated 19.03.2019 on the basis that the sale consideration of the impugned property as per section 50C would be Rs. 42,86,000/- (equivalent to the 'valuation of stamps authority') but in the original assessment the same had been wrongly taxed by taking 'actual sale consideration' of Rs. 30,05,000/- and therefore the differential of Rs. 12,81,000/- chargeable to tax had escaped assessment. Ultimately, the AO passed order of re-assessment dated 26.10.2019 u/s 147 r.w.s. 143(3) after making addition of Rs. 12,81,000/-. Further, the AO also treated this situation as a case of concealing income by assessee and initiated penalty proceeding u/s 271(1)(c) vide show-cause notices dated 30.10.2019/11.03.2021. In response, the assessee filed reply which did not find favour from AO. Ultimately, the AO imposed penalty of Rs. 2,63,886/- qua the addition of Rs. 12,81,000/- vide penalty-order dated 09.12.2021. Aggrieved by penalty so imposed, the assessee carried matter in first-appeal but did not get any success. Now, the assessee has come in next appeal before us.

3. We have heard learned Representatives of both sides and carefully perused the case record including the orders of lower-authorities.

4. Ld. AR for assessee made two-fold submissions as under:

(i) That the 'actual sale consideration' of property received by assessee was Rs. 30,05,000/- which the assessee truly declared in the return of income filed to department and the declaration so made by assessee was also accepted and assessed by AO in original assessment u/s 143(3). The sale consideration of Rs. 42,86,000/- subsequently adopted by AO in re-opened assessment represents the 'valuation of stamps authority' mentioned in the registered sale-deed of property. Ld. AR submitted that the assessee filed copy of registered sale-deed to AO during original assessment completed by way of scrutiny u/s 143(3) itself and both figures of 'actual sale consideration' and 'valuation of stamps authority' were already mentioned in such registered-deed. He submitted that the AO completed original assessment by way of scrutiny and accepted the computation of capital gain made by assessee on the basis of 'actual sale consideration' without any objection. Therefore, on facts, it is not at all a case of 'concealment of any particular of income' by assessee, rather the assessee has disclosed all particulars to AO in original assessment itself.

(ii) Without prejudice, the sale consideration of Rs. 42,86,000/- adopted by AO is not the money received by assessee; it is only a 'deemed/notional' figure as per section 50C. Therefore, even if a quantum-addition of Rs. 12,81,000/- has been made by AO on the

basis of such 'deemed/notional' figure, it cannot be a case of 'concealing of particulars of income' or 'furnishing of inaccurate particulars' and therefore the penalty u/s 271(1)(c) is not attracted at all. In support of this proposition, Ld. AR relied upon following decisions:

(a) ITAT Mumbai – Renu Hingorani Vs. ACIT, ITA No. 2210/Mum/2010 – order dated 10.11.2014

(b) ITAT Mumbai – Assistant Commissioner of Income-tax Vs. M/s Sunland Metal Recycling, ITA No. 6454/Mum/2011 – order dated 10.12.2014

(c) ITAT Ahmedabad – Kantibhai Mohanbhai Kheni Vs. The ACIT – ITA No. 1831/Ahd/2014 – order dated 20.03.2017

(d) ITAT Ahmedabad – Shri Chiman Lal Mani Lal Patel Vs. ACIT – ITA No. 508/Ahd/2010 – order dated 22.06.2012

5. With above submissions, Ld. AR contended that the penalty imposed by AO in present case is not sustainable and the same must be deleted.

6. Ld. DR for revenue defended the orders of lower authorities and submitted that the assessee has not challenged the order of re-assessment passed by AO or the addition of Rs. 12,81,000/- made therein. He submitted that when the assessee has accepted the addition made by AO, the penalty

u/s 271(1)(c) is clearly attracted. He relied upon orders of lower-authorities. and prayed to uphold the penalty.

7. In rejoinder, Ld. AR submitted that in the fourth decision cited by him i.e. *ITAT Ahmedabad – Shri Chiman Lal Mani Lal Patel Vs. ACIT – ITA No. 508/Ahd/2010 – order dated 22.06.2012,* the ITAT has also held in Para No. 5 of order *"Only because the assessee agreed to the additions because of the deeming provisions, it cannot be constructed to be filing of inaccurate particulars on the part of the assessee".*

8. We have considered rival submissions of both sides in the light of the provisions of section 50C & 271(1)(c) of the Act and the legal decisions cited before us. The dispute in present case is qua the penalty of Rs. 2,63,886/- imposed by AO u/s 271(1)(c). Admittedly, the said penalty has been imposed qua the quantum addition of Rs. 12,81,000/- made by AO in re-assessment proceeding finalized u/s 147. This addition was made by AO on the basis of section 50C of the Act by substituting 'valuation of stamps authority' at Rs. 42,86,000/- in place of 'actual sale consideration' of Rs. 30,05,000/- accepted and assessed in original scrutiny assessment. The sale consideration of Rs. 42,86,000/- substituted in re-opened assessment is by virtue of invocation of deeming provision of section 50C. Thus, the short question arises as to whether or not the penalty u/s 271(1)(c) gets attracted in such a case? This situation has been categorically examined by different benches of ITAT in the decisions quoted by Ld. AR as narrated in earlier

para. The benches of ITAT have held that the penalty u/s 271(1)(c) is not attracted. We re-produce below relevant paras of orders for an immediate reference:

(a) ITAT Mumbai – Renu Hingorani Vs. ACIT, ITA No. 2210/Mum/2010 – order dated 10.11.2014:

"8. We have considered the rival contentions and relevant record. We find that the AO had made addition of Rs. 9,00,824/- being difference between the sale consideration as per sale agreement and the valuation made by the Stamp Valuation Authority. Thus, the addition has been made by the AO by applying the provisions of section 50C of the Act. It is evident from the assessment order that the AO has not questioned the actual consideration received by the assessee but the addition is made purely on the basis of deeming provisions of the Income Tax Act, 1961. The AO has not given any finding that the actual sale consideration is more than the sale consideration admitted and mentioned in the sale agreement. Thus it does not amount to concealment of income or furnishing inaccurate particulars of income. It is also not the case of the revenue that the assessee has failed to furnish the relevant record as called by the AO to disclose the primary facts. The assessee has furnished all the relevant facts, documents/material including the sale agreement and the AO has not doubted the genuineness and validity of the documents produced before him and the sale consideration received by the assessee. Under these facts and circumstances, it cannot be said that the assessee has not furnished correct particulars of income. Merely because the assessee agreed for addition on the basis of valuation made by the Stamp Valuation Authority would not be a conclusive proof that the sale consideration as per this agreement was incorrect and wrong. Accordingly the addition because of the deeming provisions does not ipso facto attract the penalty u/s 271(1)(c). Hence in view of the decision of the Hon'ble Supreme Court in the case of CIT V/s Reliance Petroproducts Pvt. Ltd (supra), the penalty levied u/s 271(1)(c) is not sustainable. The same is deleted."

(b) ITAT Mumbai – Assistant Commissioner of Income-tax Vs. M/s Sunland Metal Recycling, ITA No. 6454/Mum/2011 – order dated 10.12.2014:

"5. Having considered the rival submissions as well as relevant material on record, we note that in the assessment proceedings, the Assessing Officer

has not given any finding that the sale consideration disclosed by the assessee is not actual amount received as per the agreement of sale. The addition was made by invoking the deeming provisions of section 50C whereby the full value of consideration was adopted as per the valuation of the stamp duty authority for levy of stamp duty. The CIT(A) after considering all the factual matrix of the case has deleted the penalty in para 5 as under:-

> *"5. On careful consideration of the arguments of the Ld. A.R. and facts stated in assessment order and penalty order and duly considering the applicable legal position and also factual matrix of the case, I am of the considered view that the assessee's grievance is legally sustainable on merits. It is undisputed that as soon as the AO pointed out the applicability of section 50C, the assessee agreed for addition and paid tax immediately. It is also undisputed that all the particulars and material facts were furnished by the assessee either along with return of income and during the course of assessment proceedings. There is no concealment of any particulars on the part of the assessee. The AO had not doubted genuineness and validity of the documents produced before him and sale consideration received by the assessee. On the contrary, facts of the case that the office premises were transferred to sister concern itself proves that there was no case to doubt the sale consideration shown in the agreement as submitted by the assessee, 70% share in the transferee company is held by the nearest family members of the partners i.e. son, wife or father and therefore it cannot be believed that sale consideration in excess of sale consideration shown in agreement might have passed. it seems that basic purpose of transfer was to change ownership of office premises from one group concern to other group concern and not to earn any profit/gain from transfer. Had it been transferred to outsiders there might be a case of suspicion. Which is not so in the instant case. Even otherwise mere suspicion is not sufficient to levy penalty. There should be some material on record to establish that actual sale consideration received by the assessee was much more than the sale consideration shown in the sale agreement. The facts and issue of the instant case are identical with the facts and issue of the case of Renu Hingorani Vs. CIT. On careful consideration of the said decision of the Hon'ble Jurisdictional ITAT, immediately transpires that the said decision is squarely applicable in the case of the assessee. Even otherwise the principles laid down by the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petroproducts Pvt Ltd. and also Hon'ble High Court of Punjab as preferred by the Ld. AR are squarely applicable. The CIT(A) being subordinate authority to the jurisdictional ITAT is bound to follow the decision of the Hon'ble Jurisdictional ITAT on the identical facts. Accordingly, in view of decision of Hon'ble Jurisdictional ITAT of Mumbai in the case of Renu Hingorani Vs. ACIT discussed above,*

the penalty levied by the AO is not sustainable in the light of the facts of the case, hence the same is deleted."

6. As it is clear that the assessee has disclosed all relevant details as well as documents in support of its computation of Short term Capital Gain by taking into consideration the actual sale consideration received by the assessee. The fact of actual sale consideration received by the assessee has not been disputed by the Assessing Officer but the addition was made simply by applying the deeming provisions of section 50C. Therefore, in view of the various decisions as relied upon by the Ld. Authorized Representative as well as by the CIT(A), we do not find any error in the impugned order of CIT(A) in deleting the penalty levied u/s 271(1)(c)."

(c) ITAT Ahmedabad – Kantibhai Mohanbhai Kheni Vs. The ACIT – ITA No. 1831/Ahd/2014 – order dated 20.03.2017:

"5. We have heard both the sides and perused the material on record. On the perusal of the of details it is observed that on the basis of the reference made to the valuation officer for valuation of property u/s 50C(2), the AO made an addition of Rs. 20130880/- u/s 50C of the act on the basis of valuation officer report, the assessing officer determined long term capital gain after reducing Rs. 67,58,003/-which the assessee has already disclosed as long term capital gain. On the analysis of the provisions of section 50C, we observed that section 50C is a deeming provision to tax the difference as capital gain where the consideration received as a result of transfer of capital assets, being land or building or both if less than the value adopted by the stamp valuation authority. It is only on account of deeming provisions of section 50C, the AO has made the addition after considering the valuation report of the valuation officer u/s 50C(2) of the act and determined the long term capital gain. The fact remains that the actual amount received was offered for taxation. It is only on the basis of the deemed consideration that the proceedings under Section 271(1)(c) of the act has been started. The revenue has failed to produce any iota of evidence that the assessee actually received one paise more than the amount shown to have been received by him. We observed that in terms of deeming provisions of section 50C, higher sales consideration of property determined by the DVO did not by itself amount to furnishing inaccurate particulars of income so as to levy penalty under section 271(1)(c) of the act The revenue has also not shown as to how the assessee could be held to have actually received this amount which is in excess of the amount of mentioned in the sale deed . It has also not been shown as to whether any corresponding addition has been made in the hands of the buyer. We further notice that the addition was made totally by invoking the provision contained in section 50C of the act, therefore, penalty cannot be imposed on the income determined on the basis of deeming provision of section

50C as this solitary does not lead to concealment of income or furnishing of inaccurate particulars of income, therefore, we find ld. CIT(A) is not justified in sustaining the penalty levied by the assessing officer.

In the circumstances, the appeal of the assessee is allowed."

(d) ITAT Ahmedabad – Shri Chiman Lal Mani Lal Patel Vs. ACIT – ITA No. 508/Ahd/2010 – order dated 22.06.2012:

"5. We have heard the rival contentions and perused the material on record. It is a fact that the addition has been made by the AO in the revisionary proceedings. The addition has been made on the basis of provisions of section 50C. It is not the case of the AO that the assessee has received consideration over and above than that declared in the sales deed. The AO has not disputed the consideration received by the assessee. The addition has been made on the basis of deeming provisions of section 50C. The assessee has furnished all the facts of sale, documents/ material before the AO. The AO has not doubted the genuineness of the documents/details furnished by the assessee. ***Only because the assessee agreed to the additions because of the deeming provisions it cannot be construed to be filing of inaccurate particulars on the part of the assessee****. The assessee agreed to addition on the basis of valuation made by the stamp valuation authority cannot be a conclusive proof that the sale consideration as per the sale agreement is seemed to be incorrect and wrong. In view of these facts we are of the considered view that penalty cannot be levied on the basis of deeming provision. We accordingly delete the same."*

9. The case of assessee is directed covered by above decisions according to which penalty cannot be imposed for mere substitution of 'actual sale consideration' by deemed/notional figure of 'valuation of stamps authority' u/s 50C. In fact, the case of assessee has more strength also for the reason that the original assessment was finalized by AO by way of scrutiny in which the registered sale-deed of property furnished by assessee was available before AO and the deed so furnished reflected the 'actual sale consideration' as well as deemed/notional figure of 'valuation of stamps authority'. When it is so, it cannot be a case of 'concealing particulars of income' by assessee as alleged by AO in penalty proceedings. Thus, respectfully following the

decisions cited before us and the considering the facts of assessee's case, we agree that the penalty imposed by AO is not sustainable. We therefore delete the penalty. The assessee succeeds in this appeal.

10. Resultantly, this appeal is allowed.

Order pronounced in open court on 17/07/2025

Sd/-	Sd/-
(PARESH M. JOSHI) JUDICIAL MEMBER	(B.M. BIYANI) ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 17/07/2025

Patel/Sr. PS

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

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore