

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI  
BEFORE SMT DIVA SINGH, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 5300/Del/2014  
(Assessment Year: 2005-06)

Ravi Dutt Sharma,  
C/o. L. M. Agarwal & Co.,  
Chartered Accountant,  
Ghaziabad  
PAN:ACQPS6788M  
**(Appellant)**

Vs.

ITO,  
Ward-2(2),  
Ghaziabad  
**(Respondent)**

Assessee by :  
Revenue by:  
Date of Hearing  
Date of pronouncement

Sh. C. M. Agarwal, CA  
Sh. K. K. Jaiswal, DR  
17/03/2016  
13/05/2016

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. This is appeal filed by the assessee against the order of the Id CIT (A), Ghaziabad dated 26.08.2014 for the Assessment Year 2005-06.
2. The assessee has raised the following grounds of appeal:-
  - “1. That the Learned CIT (A) erred in Law as well as on fact by reject the appellant Ground No 1 That the learned ITO erred in law as well as on fact to imposed the penalty of Rs.1,00,000/-U/s 271(1)(C) of Income Tax Act,
  2. That the learned CIT(A) not justified in reject the Citation on which the assessee place Reliance which are very relevant in the assessee case.
  3. That the learned CIT(A) erred In law as well as on fact by reject the appellant Ground No. 3 That in any case it is not proved by the AO that the assessee furnished inaccurate particulars of income or concealed any particular of income. So penalty order is illegal and against material available on records and liable to be cancelled.
  4. That in any case rejection of assessee appeal by CIT(A) was wrong and illegal.”
3. Brief facts of the case are that assessee is an individual filed his return of income declaring of Rs. 99750/- on 09.01.2006. Assessment u/s 143(3) of the Income Tax Act was made at Rs. 657600/-. The main difference arising between the returned income and assessed income is Rs. 489409/- on account of sale of land at village Kundla and Village Raipur. The reasons for addition is that assessee has claimed the excessive value of cost of acquisition and has also claimed exemption u/s 2(14)(iii) of the Income Tax Act. Ld Assessing Officer while passing

the assessment order computed the capital gain after taking correct cost of acquisition and also holding that land is not exempt u/s 2(14) of the Income Tax Act. The assessee agitated the matter before Id CIT (A), who reduced the addition from Rs. 489409/- to Rs. 372838/- on the ground that Rs. 120,000/ has been shown by the assessee in the earlier year's balance sheet. In penalty proceedings assessee submitted before the Id Assessing Officer that assessee has disclosed details of sale of agriculture land, however, the exemption was denied and further, provision of section 50C of the act were invoked in respect of sale of land at Dehradun. Further, claim of deduction of interest of Rs. 409851/- to bank for purchase of agricultural land was denied. Therefore, the claim of the assessee was that he has disclosed all the material facts in the return of income and none of them is false. Ld Assessing Officer rejected the contention of the assessee. He was of opinion that in the computation of income filed along with the return of income assessee claimed exemption u/s 2(14) of the Income Tax Act and during the course of assessment proceedings submitted that the land is situated beyond the 8 kms from municipal limit of Tilukhwa. Therefore, according to the Id Assessing Officer the assessee has willfully furnished inaccurate particulars of the income. Therefore, he imposed the penalty of Rs. 1 lac u/s 271(1)(c) of the Act. The assessee carried the matter before the Id CIT(A), who rejected the submission of the assessee for the reason that according to him the claim made by the assessee of exemption u/s 2(14) of the Act was not bonafide as the land was situated within 8 kms of the specified limits. Therefore, according to him the claim of the assessee was malafide as knowing fully well that exemption is not available, assessee claimed the same. He therefore applied the decision of Hon'ble Delhi High Court in case of Zoom Communication Pvt. Ltd. and confirmed the penalty u/s 271(1)(c) of the act.

4. Before us Id AR submitted that claim of the exemption of agricultural land u/s 2(14)(iii) and claim of deduction of interest are rejected and further, sales value has been adopted as per circle rate by invoking section 50C of the Act. In all three adjustments, full facts were disclosed by the assessee and none of particulars furnished were found to be inaccurate. He further relied on several judgments including the decision of Hon'ble Supreme Court in case of CIT Vs. Reliance Petro Products Pvt. Ltd. 189 Taxmann 322 (SC). Ld DR relied on the orders of lower authorities vehemently and also submitted that case of the assessee squarely covered by the decision of Hon'ble Delhi High Court in case of CIT Vs. Zoom Communication Pvt. Ltd.
5. We have carefully considered the rival contentions. We have also perused several decisions cited by Id AR as well as the decision of Hon'ble Delhi High Court in case of CIT Vs. Zoom Communications Pvt. Ltd. (supra) cited by Id DR. In the present case the claim made by the assessee was rejected by Id Assessing Officer as well as Id CIT(A), however, on reading of

the penalty order Id Assessing Officer has nowhere alleged that claim made by the assessee was false. Regarding the claim of exemption u/s 2(14)(iii) of the Act the assessee submitted that the land is beyond 8 kms from the municipal limit of Pilokhwa and also a certificate was to be given. Therefore, it cannot be stated that assessee has submitted false documents as evidence. It is merely claim for exemption made by the assessee could not be substantiated. For the second adjustment, the amount of interest which has been incurred by the assessee for purchase of land was not granted as deduction while computing capital gains. For this deduction also the claim cannot be said to be false. Regarding the substitution of actual sales consideration by deemed sale consideration u/s 50C of the Income Tax Act also cannot invite penalty u/s 271(1)(c). In view of above facts we are of the view that assessee has not furnished inaccurate particulars of income which burdens assessee with penalty u/s 271(1)(c) of the Act. Hon'ble Supreme Court in case of Reliance Petro Chemical Pvt. Ltd (supra) has held that if the particulars furnished by the assessee are not incorrect or erroneous or false there is no question of penalty u/s 271(1)(c) of the act. Mere making of the claim that is not sustainable in law will not amount to furnish inaccurate particulars regarding the income of the assessee. Therefore, we reverse the order of the Id CIT(A) and delete penalty u/s 271 (1)(c) of the Income Tax Act of Rs. 1 lac levied by the Id Assessing Officer.

6. In the result appeal of the assessee is allowed.

**Order pronounced in the open court on 13/05/2016.**

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

**-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Dated: 13/05/2016  
*A K Keot*

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi