

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, 'D', MUMBAI

BEFORE SHRI R.S.SYAL, ACCOUNTANT MEMBER AND
SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No. 2210/Mum/2010
(Assessment Years: 2006-07)

Renu Hingorani
7A, Jeevan Jagriti,
DR Ambedkar Road,
Bandra (W),
Mumbai-400050.
PAN: AALPH7223B

.... Appellant

Vs

ACIT, Range, 19(3),
Mumbai.

... Respondent

Assessee by : Shri Vipul Joshi
Respondent by : Shri Jitendra Yadav.

ORDER

PER VIJAY PAL RAO, JM

This appeal by the assessee is directed against the order dated 9.12.2009 of CIT(A) arising from the penalty order dated 26.3.2009 passed under section 271(1)(c) of the Act for the assessment year 2006-07.

2. Only effective ground raised by the assessee in this appeal is "the Id. CIT(A) erred in upholding levy of penalty u/s 271(1)(c) on addition arising u/s 50C"

3. Facts leading to this penalty are that during the year under consideration, the assessee sold two flats bearing no.101 and 102 at Mangalgyan and one flat at Navmeghdoot. As far as the sale consideration for the two flats at Mangalgyan is concerned the same was more than the value for Stamp valuation . However, the sale consideration for the flat at Navmeghdoot has been shown at Rs.63 lakhs. Whereas the stamp valuation of the said flat was at Rs.72,00,824/-. Thus, there was a difference of Rs.9,00,824/-. The AO asked the assessee to show cause as to why this difference should not be disallowed and added back to the total income of the assessee. The assessee's representative had agreed for the same and accordingly the said sum of Rs.9,00,824/- has been disallowed as income of the assessee and added to the total income of the assessee by applying the provisions of section 50C of the Act.

4. The AO consequently initiated penalty proceedings u/s 271(1) (c) and levied the penalty of Rs.198181/- at 100% of the tax sought to be evaded vide order dated 20.3.2009.

5. The assessee challenged the levy of penalty before the CIT(A) who confirmed the action of the AO by dismissing the appeal of the assessee.

6. Before us, the learned AR of the assessee has submitted that merely because the assessee agreed for addition penalty should not be levied unless and until there is a concealment of income or furnishing inaccurate particulars of income. The assessee has admitted the sale consideration of the flat in question which is less than the stamp duty valuation. The learned AR further submitted that the assessee has admitted the sale consideration as per the actual sale consideration received by the assessee and therefore there is no question of furnishing inaccurate particulars of income or concealment of income. The AO has applied the deeming provisions of section 50C of the Act and made the addition being difference between the sale consideration as per the sale agreement and the valuation made by Stamp Valuing Authority. He has further contended that the valuation by the Stamp Valuing Authority is not a conclusive evidence of actual Fair Market Value of the property and therefore, no penalty can be levied against the addition made by applying the deeming provisions of law. He has relied upon the various decisions on the point of agreed addition and submitted that agreed addition does not warrant penalty automatically. Sales valuation adopted as per the stamp valuation authority and giving rise to the addition does not warrant penalty. The learned AR also relied upon the decision of the Hon'ble Supreme Court in the case of CIT V/s Reliance Petroproducts Pvt.Ltd reported in 322

ITR 158(SC) and submitted that merely because the claim of the assessee was not allowed by applying the provisions of law does not attract the penalty u/s 271(1)(c). The Id. AR submitted that explaining the relevant fact includes the production of the record showing actual sale consideration received by the assessee. Thus, the learned AR has prayed that the penalty levied u/s 271(1)(c) be deleted.

7. On the other hand, the learned DR has contended that the assessee has admitted the income proposed by the AO being difference in the sale consideration as per sale agreement and the valuation made by the stamp valuation authority adopted by the AO. The assessee did not challenge the valuation made by the stamp valuation authority of the property in question. Therefore, the penalty levied u/s 271(1)(c) is justified. He has relied upon the orders of the lower authorities.

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.

9. The appeal of the assessee is allowed.

Pronounced in the open court on 22.12.2010

Sd

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(R.S.SYAL)
ACCOUNTANT MEMBER

(VIJAY PAL RAO)
JUDICIAL MEMBER

Mumbai, on this 22nd day of Dec, 2010
SRL:161210

copy to:

1. Appellant
2. Respondent
3. CIT Concerned
4. CIT(A) concerned
5. DR concerned Bench

BY ORDER

True copy

ASSTT. REGISTRAR, ITAT, MUMBAI