

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
"B" BENCH, AHMEDABAD
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA.No.3333/Ahd/2014
निर्धारण वर्ष/ Asstt. Year: 2009-10

Shri Harshad Mafatlal Prajapati Prop. Ankit Bricks Works F/10, Arbuda Flats Opp: Sabarmati Bus Stand Ahmedabad 380 005. PAN : AAYPP 0530 A	Vs	ITO, Ward-3(1) Ambawadi Ahmedabad.
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आयकर अपील सं./ ITA.No. 3334/Ahd/2014
निर्धारण वर्ष/ Asstt. Year: 2009-10

Shri Jayantilal Mafatlal Prajapati Prop. Bricks Works F/10, Arbuda Flats Opp: Sabarmati Bus Stand Ahmedabad 380 005. PAN : AAYPP 0531 B	Vs	ITO, Ward-3(1) Ambawadi Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri S.N. Divetia, AR
Revenue by :	Shri Mudit Nagpal, Sr.DR

सुनवाई की तारीख/Date of Hearing : 03/08/2017

घोषणा की तारीख /Date of Pronouncement: 11/09/2017

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

Assessees are in appeal before the Tribunal against order of Id.CIT(A)-II, Ahmedabad dated 13.8.2014 passed for the Asstt.Year 2009-10 on their respective appeals.

2. Common grievance of assessee, vis. Shri Harshadbhai Mafatlal Prajapati and Shri Jayantilal Mafatlal Prajapati is that the Id.CIT(A) has erred in confirming penalty of Rs.93,729/- and Rs.3,84,000/- respectively under section 271(1)(c) of the Income Tax Act, 1961.

3. With the assistance of the Id.representatives, we have gone through the record carefully. We find that the facts on all vital points are common in the case of both appellants. It emerges out from the record that the AO had received information through AIR wing exhibiting the fact that two immovable properties bearing land survey no.1124 and 1125 were sold by both the appellants vide sale deed dated 19.12.2008. These lands were purchased by them on 31.12.1985 and 28.9.1990 respectively. There was a gain of Rs.16,91,589/- in each hand of the appellants. According to the AO, this capital gain has not been offered by them in the return filed by them. Accordingly, he confronted the assessee as to why this gain should not be assessed. After hearing the assessee, he made addition and initiated penalty proceedings.

4. In the case of Shri Harshad Mafatlal Prajapati order under section 154 of the Income Tax Act was passed whereby quantum of the gain has been reduced. The AO has imposed penalty under section 271(1)(c) of the Act on the ground that had there been no scrutiny assessment, these appellants would have not disclosed the taxable income, hence, they have concealed particulars of income. Appeal to the Id.CIT(A) did not bring any relief to the assessee.

5. We have duly considered rival contentions and gone through the record. Section 271(1)(c) of the Income Tax Act, 1961 has direct bearing on the controversy. Therefore, it is pertinent to take note of the section.

"271. Failure to furnish returns, comply with notices, concealment of income, etc.

(1) The Assessing Officer or the Commissioner (Appeals) or the CIT in the course of any proceedings under this Act, is satisfied that any person

*(a) and (b)***

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income.

He may direct that such person shall pay by way of penalty.

*(i)and (Income-tax Officer,)** ***

(iii) in the cases referred to in Clause (c) or Clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefit the furnishing of inaccurate particulars of such income or fringe benefits:

Explanation 1- Where in respect of any facts material to the computation of the total income of any person under this Act,

(A) Such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the CIT to be false, or

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him, then, the amount added or disallowed in computing the total income or such person as a result thereof shall, for the purposes of Clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed."

6. A bare perusal of this section would reveal that for visiting any assessee with the penalty, the Assessing Officer or the Learned CIT(Appeals) during the course of any proceedings before them should be satisfied, that the assessee has; (i) concealed his income or furnished inaccurate particulars of income. As far as the quantification of the penalty is concerned, the penalty imposed under this section can range in between 100% to 300% of the tax sought to be evaded by the assessee, as a result of such concealment of

income or furnishing inaccurate particulars. The other most important features of this section is deeming provisions regarding concealment of income. The section not only covered the situation in which the assessee has concealed the income or furnished inaccurate particulars, in certain situation, even without there being anything to indicate so, statutory deeming fiction for concealment of income comes into play. This deeming fiction, by way of Explanation I to section 271(1)(c) postulates two situations; (a) first whether in respect of any facts material to the computation of the total income under the provisions of the Act, the assessee fails to offer an explanation or the explanation offered by the assessee is found to be false by the Assessing Officer or Learned CIT(Appeal); and, (b) where in respect of any fact, material to the computation of total income under the provisions of the Act, the assessee is not able to substantiate the explanation and the assessee fails, to prove that such explanation is bona fide and that the assessee had disclosed all the facts relating to the same and material to the computation of the total income. Under first situation, the deeming fiction would come to play if the assessee failed to give any explanation with respect to any fact material to the computation of total income or by action of the Assessing Officer or the Learned CIT(Appeals) by giving a categorical finding to the effect that explanation given by the assessee is false. In the second situation, the deeming fiction would come to play by the failure of the assessee to substantiate his explanation in respect of any fact material to the computation of total income and in addition to this the assessee is not able to prove that such explanation was given bona fide and all the facts relating to the same and material to the computation of the total income have been disclosed by the assessee. These two situations provided in Explanation 1 appended to section 271(1)(c) makes it clear that that when this deeming fiction comes into play in the above two situations then the related addition or disallowance in

computing the total income of the assessee for the purpose of section 271(1)(c) would be deemed to be representing the income in respect of which inaccurate particulars have been furnished.

7. In the light of the above, we have gone through the record. A perusal of the record would show that stand of the assessee before the Id.Revenue Authorities was that when they have entered into an agreement for sale of this property, and at that point of time that land was agriculture land, and it was exempt for levy of capital gain tax as per section 2(14) of the Income Tax Act. Vendees have got changed the status of the land from agriculture to non-agriculture land during the finalization of the sale deed, and therefore, when the AO has confronted, they have paid the taxes. According to the assessee, they were under impression that since the land was an agriculture land, therefore, no tax liability would thrust upon them. This explanation was not found to be false by the AO. It is a *bona fide* explanation given by the assessee. They might have harboured a belief that being an agriculture land sold by them, no capital gain would be leviable. Considering the above aspects, we allow the appeals of the assessee and delete penalty.

8. In the result, the appeals of the assessee are allowed.

Order pronounced in the Court on 4th September, 2017 at Ahmedabad.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER**

Ahmedabad; Dated 11/09/2017