

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : B : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.1865/Del/2016
Assessment Year : 2007-08

ACIT,
Circle-52(1),
Dr. S.P. Mukherjee Civic Centre,
New Delhi.

Vs. Eagle Theatres,
H-10, Plaza Cinema Building,
Connaught Circus,
New Delhi.

PAN: AAAFE2646N

ITA No.1234/Del/2016
Assessment Year : 2007-08

Eagle Theatres,
H-10, Plaza Cinema Building,
Connaught Circus,
New Delhi.

Vs. ACIT,
Circle-52(1),
Dr. S.P. Mukherjee Civic
Centre,
New Delhi.

PAN: AAAFE2646N

(Appellant)

(Respondent)

Assessee By : Shri Baljit Singh, CA
Department By : Shri Vijay Kumar Jiwani, Sr. DR

Date of Hearing : 17.05.2018

Date of Pronouncement : 18.05.2018

ORDER

PER R.S. SYAL, VP:

These two cross appeals - one by the assessee and the other by the Revenue are directed against the order passed by the CIT(A) on 04.01.2016 in relation to penalty imposed by the Assessing Officer (AO) u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter also called 'the Act') for the assessment year 2007-08.

2. Succinctly, the facts of the case are that the assessee owned two properties, namely, Plaza Cinema, New Delhi and Minerva Cinema, Mumbai. During the year under consideration, Minerva Cinema property was sold and capital gain was computed. The assessee claimed revenue deduction of Rs.66.88 lac as one-time payment to employees as retrenchment compensation. The AO did not allow such deduction. The Tribunal in the first round restored this matter to the file of the AO for a fresh adjudication vide its order dated 31.01.2011. In the second round of proceedings, giving effect to the direction of the Tribunal, the AO again made the addition. The Tribunal vide its order dated 6.1.2017 in the second round, instead of allowing revenue deduction, accepted the alternate plea of

the assessee for allowing such expenditure as cost of improvement u/s 48 of the Act. Apart from that, the assessee, in the computation of capital gain, attributed Rs.1 lac towards constructed portion of building as the premises was sold on consolidated basis comprising of land and building. The Assessing Officer estimated sale consideration relating to super structure at Rs.32.70 lac. He accordingly made the addition. The Tribunal reduced the estimate of sale consideration towards constructed portion to Rs. 16.35 lac. The AO imposed penalty of Rs. 18,05,176/- u/s 271(1)(c) of the Act w.r.t. the above two items. The ld. CIT(A) deleted the penalty in respect of retrenchment compensation paid to employees in terms of agreement to sell while confirming the penalty in relation to the other item, being, computation of capital gain on the sale consideration attributable to building for which the assessee estimated sale consideration at Rs.1 lac. Both the sides are in appeal on their respective stands.

3. We have heard both the sides and perused the relevant material on record. In so far as the deletion of penalty on the payment of retrenchment compensation to employees is concerned, it is seen that the assessee initially claimed such amount as revenue expenditure. The Tribunal, vide

its order in the second round, has accepted the assessee's alternate plea for allowing such expenditure as an improvement cost u/s 48 of the Act. It is obvious that the genuineness of payment of retrenchment compensation is not disputed. As against the assessee's stand of claiming such amount as a revenue expenditure, the Tribunal has adopted another route of allowing such deduction in the computation of capital gain by treating it as cost of improvement. These facts do not warrant imposition of penalty. In our considered opinion, the Id. CIT(A) was right in deleting the penalty on this score.

4. As regards the other aspect, it is seen that the assessee attributed sale consideration of Rs.1 lac to building with cost of acquisition at Rs.70,085/- and computed capital gain at Rs.29,912/-. The sale deed was silent on the consideration relatable to building super structure. The Assessing Officer estimated sale consideration at Rs.32.70 lac which amount finally stood reduced to Rs.16.35 lac by the Tribunal. It is on this basis that the penalty has been imposed and confirmed.

5. As is obvious from the narration of facts that it is only a case of estimation of sale consideration of super structure. Admittedly, no separate sale consideration of super structure was assigned in the sale deed. Whereas the assessee estimated Rs.1 lac as sale consideration of building sold, the Assessing Officer estimated the same at Rs.32.70 lac, which got finally settled by means of appellate order at Rs.16.35 lac. These facts indicate that penalty is based on mere estimate. The Hon'ble Delhi High Court in *CIT vs. Aero Traders Pvt. Ltd., (2010) 322 ITR 316 (Del)*, has held that no penalty u/s 271(1)(c) can be imposed when income is determined on estimate basis. Similar view has been taken by the Hon'ble P&H High Court in *Harigopal Singh vs. CIT (2002) 258 ITR 85 (P&H)* and the Hon'ble Gujarat High Court in *CIT vs. Subhash Trading Company, 221 ITR 110 (Guj)*. Under these circumstances, we are of the considered opinion that the ld. CIT(A) was not justified in sustaining the penalty on the basis of estimate. We, therefore, order to delete the penalty.

6. In the result, the appeal of the assessee is allowed and that of the Revenue is dismissed.

The order pronounced in the open court on 18 .05.2018.

Sd/-

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

[R.S. SYAL]
VICE PRESIDENT

Dated, 18th May, 2018.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.