

आयकर अपील[आयकर अपील] पुणे न्यायपीठ “बी” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE
(Through – VIRTUAL COURT)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं / ITA No.3041/PUN/2017

निर्धारण वर्ष / Assessment Year : 2011-12

Ravindra Anant Bhuskute,
Flat No.1, Savli Banglow,
Datar Ali, Pen, Raigad – 402107.

..... अपीलार्थी /
Appellant

PAN : ABKPB3372K

बनाम v/s

The Income Tax Officer,
Ward – 4, Panvel.

..... प्रत्यर्थी /
Respondent

Assessee by : None

Revenue by : Shri Mahadevan A.M. Krishnan

सुनवाई की तारीख / Date of Hearing : 04.08.2020

घोषणा की तारीख / Date of Pronouncement : 04.08.2020

आदेश / ORDER

PER SHRI PARTHA SARATHI CHAUDHURY,

This appeal preferred by the assessee emanates from the order of the
Ld. CIT(Appeals) – 2, Pune dated 05.10.2017 for the assessment year 2011-
12 as per the following grounds of appeal on record:

“1. The learned Commissioner Of Income Tax (Appeals) 2, has erred in law and on facts of the case in levying the penalty u/s 271(1)(c) of the Income Tax Act, 1961.

2. The learned Commissioner Of Income Tax (Appeals) 2, erred in law and on the facts in not appreciating the explanation of the assessee that cheques could not be presented for clearing due to a ban put on the operations of Pen Co-operative Urban Co-operative Bank and he could not make the alternative arrangements for payment to the assessee. Thus the buyer failed to honour his commitment of payment for land hence the agreement became inoperative or null and void due to non-performance of the buyer. Subsequently fresh cheques were issued by buyer only in July 2014.”

2. The brief facts in this case are that the assessee is a Stenographer in Maharashtra State Road Transport Corporation and derives income from salary. During the year assessee along with three other co-owners sold an inherited piece of land for a total consideration of Rs.28,60,000/- as against market value of Rs.51,66,000/-. The assessee along with three other co-owners had received a cheque of Rs.7,15,000/- each and the sale deed was executed on 17.08.2010. The assessee, however, did not disclose any income from the sale of above plot with a belief that the sale was not complete since the payment was not realized in the year under consideration and the same was realized only in July, 2014. It was contended that the plot was sold on 17.08.2010 but it was mutually agreed between the buyer and the seller to present these cheques in October, 2010 and in the meantime, in September, 2010, the Reserve Bank of India (R.B.I.) put restrictions on the entire functioning of the Pen Co-operative Urban Bank Ltd., w.e.f., 24.09.2010. As a result of which, cheques could not be deposited in the bank for clearance. The assessee further submitted before the Department that he has not received any consideration from the buyer till date of assessment and the cheques issued by the buyer have been returned as unaccepted as the bank whose cheques were given i.e., Pen Co-operative Urban Bank Ltd., was in critical problems and was in the verge of winding up. This explanation of the assessee was not accepted by the Assessing Officer and he therefore, by invoking the provisions of Sec.50C of the Act, computed the amount of long term capital gains and made the addition. The Assessing Officer further proceeded to levy the penalty u/s 271(1)(c) of the Act at Rs.1,06,041/- being 100% of the tax sought to be evaded.

3. The case of the Department is that on concealment of income by the assessee, being aggrieved the assessee preferred appeal before Ld.CIT(A) and placed on record detailed written submissions before him. The Ld.CIT(A) after considering the assessment order, facts of the case as well as the submissions of the assessee has observed and held that the assessee was in obligation to disclose the transaction in the return of income and should have shown the income from capital gains. In the opinion of the Ld.CIT(A), the assessee suppressed the transaction and only it came to light during the assessment proceedings and therefore, there is a clear intention on the part of the assessee for concealing the income from the capital gain earned on sale of land. The Ld.CIT(A) upheld the order of the penalty u/s 271(1)(c) of Rs.1,06,041/- being 100% of the taxation sought to be evaded as imposed by the Assessing Officer.

4. Being further aggrieved, this appeal has been preferred by the assessee before us.

5. At the time of hearing, neither the assessee nor his learned Authorised Representative was present. On the date of hearing, we proceeded to adjudicate the case after recording the submissions of the learned Departmental Representative and considering the relevant facts on record.

6. We have perused the case records and analyzed the facts and circumstances of this case and given considerable thought to the findings of the sub-ordinate authorities. At the time of hearing, we enquired with the learned Departmental Representative since assessee was having only

1/4th share in the property and the imposition of penalty was done against him by the Department and what was the steps taken by the Department for the other three co-owners. To this question, the learned Departmental Representative has answered that no action has been taken against the other three co-owners of the property. Further, the facts on record could not be disputed by the learned Departmental Representative placing on record any evidences. The facts are clear that during the year under consideration, no payment was realized by the assessee and it was only realized in the year 2014 and that further the buyer and the seller has actually agreed that they would present the cheques in October, 2010 whereas in September 2010, the R.B.I. put restrictions on the functioning of the Bank i.e., Pen Co-operative Urban Bank Ltd., w.e.f. 24.09.2010 and this is the same bank from where the cheques were supposed to be cleared and received by the assessee to the extent of 1/4th share in the sale transaction. But due to the bank being in critical financial condition and the said restrictions imposed on the bank by the R.B.I, no payment was realized in the year under consideration. These facts were not disputed by the learned Departmental Representative nor he could place on record any evidences contrary to these facts on record. The assessee was under the bonafide belief that since he has not received any consideration during the relevant year, the sale is not complete and no profits accrued to him. The Revenue also could not place on record any evidence of actual receipt of any amount by the assessee during the year under consideration. The procedure of imposition of penalty u/s 271(1)(c) shall arise and only arise if there is any concealment of income or furnishing of inaccurate particulars of income. To determine these factors, the facts and circumstances are essential. In the present facts, when the charge is of the concealment of

income, the facts does not suggest even on a remote basis that assessee has concealed his income rather the assessee has acted under bonafide belief and even the Revenue could not place on record any evidence of receipt of income regarding 1/4th share of the property by the assessee in the relevant year. Neither there is *mens rea* nor *actus reus* on the part of the assessee. We find that our view is fortified by the judgment of the Hon'ble Supreme Court in the case of K.C.Builders Vs. ACIT in Crl. Appeal No.212-213 dt.28.01.2004. We find it relevant to extract some few lines from the paragraph 87 of the order hereunder :

“87.....We have carefully considered the rival submissions and perused the materials brought on record. Although there is a discussion by the Assessing Officer that the assessee has received some on-money in respect of sale of flats but he has not mentioned what is the exact quantum of such on-money receipts. The mere fact that though the receipt of on-money is a prevalent practice in the case of transaction in flats, it cannot be presumed that there was a concealment of income or evasion of taxes. The Department must bring out material to indicate the actual concealment of income. The whole discussions in the assessment order clearly shows that the Department has proceeded only on the basis of the cost of construction. At the stage when enquiries were made, the assessee has got the valuation done by an approved valuer and filed the revised returns and paid the taxes thereon. This conduct clearly shows that there was some sort of settlement between the assessee and the Department. The assessment of income is based purely on estimate basis. Without adequate materials, it is impossible to accept the Department's contention that some part of the estimated income represents concealed income. The assessee has filed the revised returns. By so revising the returns, the assessee has substituted the income of the original return with that of the revised returns vis-`-vis the revised return there is no concealment of any income. The department has accepted all these revised income which clearly shows that the assessments are based on the basis of the voluntary offer made by the assessee. There is no material brought before us even at this stage to show that there was any concealment of income by the assessee and therefore find force in the stand taken by the assessee that the entire revision of income was as a result of voluntary offer made by the assessee. Keeping in view the ratio laid down by the Supreme Court in the case of [Sir Shadilal Sugar and General Mills Ltd. And Another vs. CIT](#) (165 ITR 705), we hold that in the facts and circumstances of the case there is no concealment of income by the assessee. Accordingly, the penalties are cancelled.

7. We also find that the above ratio of the Hon'ble Apex Court has been followed by the Hon'ble Allahabad High Court in the case of CIT Vs. Mohanlal Sharma dt.27.04.2005.

8. Considering the totality of the facts and circumstances and the aforesaid judicial pronouncements, we are of the considered view that this is not a fit case for imposition of penalty u/s 271(1)(c) and we direct the Assessing Officer to delete the penalty from the hands of the assessee and we hereby allow assessee's appeal.

9. In the result, the appeal of the assessee is allowed.

Order pronounced on 4th day of August, 2020.

Sd/-
(R. S. SYAL)
VICE PRESIDENT

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 4th August, 2020.
Yamini

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-2, Pune.
4. Pr.CIT-2, Thane,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,
ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.