

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ "D", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL AT AHMEDABAD,
"D" BENCH

सर्वश्री श्री मुकुल कुमार श्रावत, न्यायिक सदस्य, एवं अनिल चतुर्वेदी, लेखा सदस्य
के समक्ष ।
BEFORE S/SHRI MUKUL KUMAR SHRAWAT, JUDICIAL MEMBER
AND
ANIL CHATURVEDI, ACCOUNTANT MEMBER)

ITA No.508/Ahd/2010
[Asstt. Year : 2006-2007]

Shri Chimanlal Manilal Patel बनाम/ ACIT, Cir.6
54, Patel Nagar Society Vs. Surat.
Nr. Jay Ambe Society
Opp: Pushpa Complex
Adajan, Surat 395 009.

PAN : AFFPP 0103 H

(अपीलार्थी / Appellant)

(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से/ : Shri J.P. Shah
Assessee by
राजस्व की ओर से/ : Shri Raj Mehta
Revenue by
सुनवाई की तारीख/ : 11th June, 2012
Date of Hearing
घोषणा की तारीख/ : 22-6-2012
Date of Pronouncement

आदेश / ORDER

PER ANIL CHATURVEDI, ACCOUNTANT MEMBER:

This appeal is by the assessee against the order of the CIT(A)-IV,
Surat dated 12.10.2009 for the A.Y.2006-2007.

2. The assessee was owner of agricultural land at Adajan Gaon along with eight other co-owners. During the year the land was sold for a total consideration of Rs.36 lacs and the assessee in the original return of income filed u/s 139(1) on 31.5.2006 offered capital gains by taking the sales consideration at Rs.4,50,000 (being his share in the said land). Thereafter a notice u/s 148 was issued on the assessee on 8.2.2008 on the ground that in the original return of income the sales consideration of the aforesaid land was not offered as per the provisions of section 50C of the Act. In response to the notice, the assessee filed revised return wherein his share of sales consideration was taken at Rs.11,84,065 being the stamp duty value as per the provisions of section 50C of the Act. The assessee paid the taxes alongwith the interest. The AO vide his order u/s 143(3) rws 147 accepted the revised return. Subsequently the AO initiated penalty proceedings u/s 271(1)(c) for the reason that the assessee in the original return had not shown capital gains as per the provisions of section 50C. The submissions and explanations made by the assessee were rejected by the AO and he levied a penalty of Rs.1,39,305/- u/s 271(1)(c). The assessee preferred appeal before CIT(A). CIT(A) confirmed the action of the AO for the reason that the revision of return was done only after the receipt of notice u/s 148 and was not a voluntary revision done in a *suo motto* manner. CIT opined that the present was a case where inaccurate particulars were furnished and the correct particulars were suppressed from the Revenue with intent of concealment. Aggrieved by the action of the CIT(A), the assessee is now in appeal before us.

3. The Ld. A.R. submitted that the property was owned by nine co-owners and the assessee was of the view that the value adopted by

stamp duty authority was more than the fair market value of such property. The assessee has not received any amount in excess of what is shown in the sale deed but the tax has been levied by invoking the deeming provisions of section 50C. It was further stated that the stamp duty and the additional stamp duty was paid by the purchaser and not by the assessee. There is nothing on record which suggests that the assessee has received amount over and above the sale value declared in the sale deed or purchaser has paid additional amount to the assessee. It was further submitted that the penalty proceedings are apart and separate from assessment proceedings and therefore the additions made in the assessment proceedings cannot be the basis for concluding that the assessee is guilty of concealment. Before the assessee is held liable for concealing the particulars of income or furnishing of inaccurate particulars of income, it has to be independently found in penalty proceedings that the disputed amount represents his income. The assessee further relied on the decisions of Prakash Chand Nahar Vs ITO (2007) 110 TTJ (Jd) 886, ACIT vs Mrs. N. Meenakshi (2009) 125 TTJ (Chennai) 856 and Renu Hingorani Vs ACIT (ITA No 2210/Mum/2010).

4. The Ld. D.R. on the other hand contended that the assessee has admitted the income proposed by the AO, the assessee has not challenged the valuation made by the valuation authority and the revision of return was done only after the receipt of notice u/s 148 and was not a voluntary revision done in a *suo motto* manner. In view of these facts the AO was right in levying the penalty.

5. We have heard the rival contentions and perused the material on record. It is a fact that the addition has been made by the AO in the

revisionary proceedings. The addition has been made on the basis of provisions of section 50C. It is not the case of the AO that the assessee has received consideration over and above than that declared in the sales deed. The AO has not disputed the consideration received by the assessee. The addition has been made on the basis of deeming provisions of section 50C. The assessee has furnished all the facts of sale, documents/ material before the AO. The AO has not doubted the genuineness of the documents/details furnished by the assessee. Only because the assessee agreed to the additions because of the deeming provisions it cannot be construed to be filing of inaccurate particulars on the part of the assessee. The assessee agreed to addition on the basis of valuation made by the stamp valuation authority cannot be a conclusive proof that the sale consideration as per the sale agreement is seemed to be incorrect and wrong. In view of these facts we are of the considered view that penalty cannot be levied on the basis of deeming provision. We accordingly delete the same.

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

Order pronounced in Open Court on the date mentioned hereinabove.

Sd/-
(मुकुल कुमार श्रावत / MUKUL Kr. SHRAWAT)
(न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(अनिल चतुर्वेदी / ANIL CHATURVEDI)
लेखा सदस्य /ACCOUNTANT MEMBER

Copy of the order forwarded to:

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

BY ORDER
DR/AR, ITAT, AHMEDABAD