

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D", MUMBAI**

**Before Justice (Retd.) C.V. Bhadang, President and  
Shri B.R. Baskaran, Accountant Member**

**ITA NO. 2839/MUM/2023 : A.Y : 2015-16**

Ramprasad Kamtaprasad Nigam 45A, Raichand Niwas, S.K.Bole Marg, Prabhadevi, Mumbai-400028 <b>PAN : AAAPN3642D(Appellant)</b>	Vs.	ITO -Ward 21(3)(1) Room No.207, 2 <sup>nd</sup> Floor Piramal Chambers, Lalbaug Mumbai-400 012
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**Appellant by : Shri Mandar Vaidya  
Respondent by : Smt Mahita Nair**

**Date of Hearing : 12/12/2023  
Date of Pronouncement : 12 /12/2023**

**ORDER**

**Per Justice (Retd.) C.V. Bhadang, President :**

The challenge in this appeal for A.Y.2015-16 at the instance of the assessee is to the order dated 22/06/2018, thereby imposing penalty under Section.271(1)(c) of the Income Tax Act, 1961.

2. The brief facts are that the appellant filed his return of income (ROI) for A.Y.2015-16 declaring a total income of Rs.4,67,710/-. The appellant had claimed exemption therein u/s.54 of the said Act of Rs.32,81,600/- on account of purchase of a flat in Mahakali Nagar SRA project for a consideration of Rs.82,04,000/-.

3. The case was selected for scrutiny and during the assessment proceedings, the appellant submitted relevant details / documents before the Assessing Officer (AO). Upon verification, the AO found that the appellant had sold house property at Kanpur for a consideration of Rs.29,00,000/- on 24/02/2015. The appellant had invested the said amount towards purchase of a flat in the Mahakali Nagar SRA project for a consideration of Rs.82,04,000/- and in support thereof, a copy of Memorandum of Understanding (MoU) dated 26/03/2015 was produced.

4. The Assessing Officer found that the flat was not registered in the name of the appellant and was still under construction. It was further found that the proposed redevelopment project was not even approved on the date of MoU. The Assessing Officer completed the assessment u/s.143(3) of the said Act with the addition of Rs.10,51,830/- on account of the capital gains and determined total income of Rs.15,19,542/-.

5. It appears that the penalty proceedings u/s.271(1)(c) were initiated on 27/12/2017 by issue of notice u/s.274 r.w.s. 271(1)(c) of the Act for "furnishing of inaccurate particulars of income", leading to concealment of income. Upon consideration of the appellant's submission, a minimum penalty of Rs.2,18,737/- has been imposed vide order dated 22/06/2018 for "concealment of particulars of income and furnishing of inaccurate particulars of income".

6. The appellant carried the matter in appeal before the CIT(A) *inter alia* on the ground that the imposition of the penalty was not justified merely on the ground that the appellant had claimed exemption which was disallowed.

It was contended that there was neither concealment of particulars of income nor furnishing of inaccurate particulars of income within the meaning of Section 271(1)(c) of the said Act. It was therefore, contended that the order imposing penalty was bad in law.

7. The CIT(A) has dismissed the appeal by order dated 16/06/2023 *inter alia* on the ground that the appellant had failed to respond to the notices and to prosecute the appeal effectively. The CIT(A) has also adverted to the merits and has found that the penalty u/s.271(1)(c) of the Act is a civil liability and willful concealment is not an essential ingredient for attracting such civil liability for which reliance was placed on the decision of the Hon'ble Supreme Court in Union of India vs. Dharmendra Textiles Processors (2006) 306 ITR 277(SC). The CIT(A) has further found that on the date of execution of the MoU, the project had not received the approval and the MoU clearly mentioned that the developer will execute the regular agreement after obtaining IOD/ CC from the concerned authority. Thus, the CIT(A) has found that the appellant has no title to the said flat. The CIT(A) has placed reliance on the decision of the Jurisdictional High Court in Rasiklal M Parikh vs. ACIT-19(2), Mumbai (393 ITR 536) in order to find that to get examined u/s.54F, the assessee had to obtain the allotment letter from the developer under the Maharashtra Ownership of Flats Act, 1963 (MOFA). Lastly, the CIT(A) has found that the assessee had not challenged the substantive addition made upon refusal of the exemption. This is how the appellant is before us.

8. We have heard the Id. Counsel for the appellant and the Id. CIT DR for the Revenue. With the assistance of the parties, we have gone through the record.

9. It is submitted by the Id. Counsel for the appellant that there was neither concealment of particulars of income nor furnishing of inaccurate particulars of income which is sine qua non for imposition of penalty u/s.271(1)(c) of the Act. It is submitted that merely because the claim of exemption under Section.54F of the Act was disallowed, cannot necessarily lead to inference or conclusion as to concealment of particulars of income or furnishing of inaccurate particulars of income as required by Section 271((1)(c) of the said Act. It is submitted that the fact that the appellant has not challenged the substantive addition, has no relevance to the imposition of penalty which is a separate proceeding and would be strictly governed by the requirements of Section 271(1)(c) of the said Act. On behalf of the appellant reliance is placed on the decision of the Hon'ble Karnataka High Court in *Commissioner of Income Tax vs. Sambandam Udaykumar (345 ITR 389)* and that of the Hon'ble Madras High Court in *Commissioner of Income Tax vs. Sardarmal Kothari(302 ITR 286)* in order to submit that the completion of the construction or occupation of the new residential premises is not necessary for grant of exemption u/s.54F of the said Act. It is pointed out that the appellant having invested the amount within the statutory period had no control on the completion of the construction and obtaining of the occupation certificate. Reliance has been placed on the decision of the Hon'ble Supreme Court in *Commissioner of Income Tax, Ahmedabad vs. Reliance Petroproducts (P) Ltd (322 ITR 158)* in order to submit that mere non-acceptance of a claim of expenditure and / or exemption, by itself, would not attract penalty under Section.271(1)(c) of the Act.

10. The Id. CIT DR has supported the impugned order. It is submitted that the appellant ought to be conscious of the fact that as on the date of the execution of MoU and investment of the amount of capital gains, the project was not even approved much less completed. It is submitted that thus the claim for exemption itself was unjustified which is evident from the fact that the appellant had accepted the substantive addition. It is therefore, submitted that the appellant is precluded from challenging the order of penalty. It is pointed out that appellant has also failed to effectively prosecute the appeal and had failed to respond to various notices issued. It is therefore, submitted that no case for interference is made out.

11. We have considered the rival circumstances and the submissions made. It is necessary to note that the appellant had failed to appear before the CIT(A). However, the CIT(A) has also adverted to the merits of the matter and has rendered findings on merits. Therefore, we have heard the parties on merits and the appeal is being disposed of accordingly.

12. At the outset it is necessary to note that the appellant has not challenged the substantive addition made upon refusal of the exemption under Section.54F of the Act. Therefore, it is neither necessary nor possible for us to dwell upon the validity of the addition, so made. The only question is whether such addition *per se* would lead to the imposition of penalty u/s.271(1)(c) of the Act. It is now well settled that the penalty proceedings are separate than the assessment proceedings and the imposition of the penalty in the present case has to be strictly within the requirements of Section 271(1)(c) of the said Act. It has therefore, to be seen whether there was either concealment of the particulars of income or furnishing of

inaccurate particulars of income by the assessee while filing the return and we find that there was none which could be attributed to the appellant. The relevant facts are not in dispute. It is thus, not in dispute that the appellant had sold certain house property at Kanpur and the amount of capital gains was invested for purchase of a residential tenement in SRA project. On the basis of this, a claim for exemption under Section.54F of the Act was made which was disallowed on the ground that the construction of tenement was not complete and even the project was not approved on the date of execution of the MoU. We are of the considered view that mere denial of the claim for exemption by itself cannot lead to the inference of either concealment of the particulars of income or furnishing inaccurate particulars of income, within the meaning of Section 271(1)(c) of the Act.

13. A useful reference in this regard may be made to the decision of the Hon'ble Supreme Court in Reliance Petroproducts (P) Ltd (supra). In that case the assessee company had filed return of income claiming interest expenditure on a loan incurred by it for purchasing certain shares by way of its business policies. The Assessing Officer had disallowed the expenditure under Section.14A and had simultaneously levied penalty under Section.271(1)(c), both on account of concealment of income and furnishing of inaccurate particulars of income. On appeal, the order of penalty was set aside. The said order was confirmed by the Tribunal and thereafter by the Hon'ble High Court and the matter went to the Hon'ble Supreme Court. The Hon'ble Supreme Court has *interalia* held that mere making of a claim, which is not sustainable in law, by itself will not amount to furnishing of inaccurate particulars of regarding income. The following observations in para 9& 10 of the judgment are apposite:-

“9.....  
.....  
.....A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.

10. It was tried to be suggested that section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect, it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that by itself would not, in our opinion, attract the penalty under section 271(1)(c). If we accept the contention of the revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature.

(Emphasis supplied)

13. In this case we also find from the perusal of the record that while the Assessing Officer had found that the assessee has not disclosed the income of Rs.10,51,830/- being the long term capital gains on sale of property (which

would relate to the first part of Section 271(1)(c), the CIT(A) in its impugned order had found that the appellant had furnished inaccurate particulars, neither of which can be said to be borne out of record. The appellant had infact disclosed the amount of capital gains and only aspect is that the claim for exemption was disallowed which cannot lead to an order of imposition of penalty.

14. In the result, appeal has to succeed. The impugned orders passed by the AO as well as the CIT(A) are hereby set aside. Appeal allowed accordingly.

Order pronounced on 12/12/2023.

Sd/-  
[B.R. Baskaran]  
ACCOUNTANT MEMBER

Sd/-  
[Justice (Retd.) C.V. Bhadang]  
PRESIDENT

Mumbai; Dated : 12/12/2023

Karuna, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)  
ITAT, Mumbai