IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD

BEFORE SHRI B.RAMAKOTAIAH, ACCOUNTANT MEMBER
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA.No.565/Hyd/2015
Assessment Year 2008-2009

Bhavya Anant Udeshi Hyderabad – 500 034 PAN AALPUB8857A	vs.	The Income Tax Officer (International Taxation)-I, Hyderabad – 500 004.
(Appellant)		(Respondent)

For Assessee :	Mr. Ajay Gandhi
For Revenue :	Mr. Prabhat Kumar Gupta

Date of Hearing :	23.07.2015
Date of Pronouncement :	04.09.2015

ORDER

PER SAKTIJIT DEY, J.M.

The aforesaid appeal of the assessee is directed against the Order dated 26.02.2015 of Ld. CIT(A)-X, Hyderabad dated 26.02.2015 confirming penalty imposed under section 271(1)(c) of an amount of Rs.50,91,600 for the A.Y. 2008-2009.

2. Briefly the facts are, the assessee an individual is a non-resident Indian. For the assessment year under consideration assessee had filed her return of income on 31.07.2008 declaring income of Rs.3,18,567 which included short term capital gain of Rs.3,06,625 from sale of shares as well as sale of immovable property at

Hyderabad. During the course of assessment proceedings, it was noticed by the A.O., though, the assessee has declared sale consideration as per the sale deed at Rs.1 lakh, however, for the purpose of stamp duty, the registering authority of the State Government had valued the property at Rs.2,55,50,000. The A.O. therefore, invoking the provisions of section 50C of the Act, completed the assessment in the case of the assessee by computing capital gain at Rs.2,54,58,000. Being aggrieved of the assessment order so passed, assessee preferred appeal before the Ld. CIT(A). The CIT(A) having confirmed the capital gain determined by the A.O., assessee carried further appeal before the ITAT. However, the ITAT also upheld the view of the departmental authorities in applying provisions of section 50C for computation of capital gain. In the meanwhile, A.O. issued a notice to the assessee requiring him to show cause as to why penalty under section 271(1)(c) of the Act shall not be imposed for furnishing inaccurate particulars of income for the reason that the assessee has knowingly/deliberately disclosed the sale consideration of property at a lesser rate than what was determined by the registering authority. Though, assessee in reply to the show cause notice rebutted the allegation made by the A.O. and submitted that assessee has furnished all material particulars relating to sale transaction of property by furnishing sale deeds and all other documents for the consideration of the A.O. and the determination of the capital gain is only by applying the provisions of section 50C by adopting the

value determined by the SRO for stamp duty purpose as deemed sale consideration, it cannot be said that assessee has furnished inaccurate particulars of income. The A.O. however, did not find merit in the explanation of the assessee. After rejecting the same, the A.O. proceeded to pass an order under section 271(1)(c) of the Act imposing penalty for an amount of Rs.50,91,600 being 100% of the tax sought to be evaded. Being aggrieved of the penalty order, assessee preferred appeal before the Ld. CIT(A). The Ld. CIT(A) also confirmed the levy of penalty by endorsing the A.O's view that assessee has furnished inaccurate particulars of income. Being aggrieved, assessee is before us.

3. The learned A.R. submitted before us that there being no conclusive evidence before the A.O. to prove the fact that assessee has received any amount over and above the sale consideration mentioned in the sale deed imposition of penalty under section 271(1)(c) of the Act on the valuation made by the stamp valuation authority for the purpose of stamp duty cannot be considered as the amount received by the assessee. The A.R. submitted that the provision of section 50C being a deeming provision, it cannot be used for the purpose of imposition of penalty under section 271(1)(c). Learned A.R. submitted, the assessee having furnished all material facts in the course of assessment proceeding like copy of sale deed, other connected documents, there is no material on record to show that assessee has furnished

inaccurate particulars of income. In support of his contention, learned A.R. relied upon the following decisions :

1.	Renu Hingorani, Mumbai vs. ACIT, Range 19(3), Mumbai Order dt.22.12.2010 in ITA.No.2210/Mum/2010
2.	Shri Chimanlal Manilal Patel, Surat vs. ACIT, Cir.6, Surat Order dt.22.06.2012 in ITA.No.508/Ahd/2010
3.	ACIT 14(1), Mumbai vs. M/s. Sunland Metal Recycling, Mumbai Order dt.10.12.2014 in ITA.No.6454/Mum/2011
4.	Shri C. Basker, Karur vs. The ACIT, Circle-II, Trichy Order dt.12.10.2012 in ITA.No.997/Mds/2012 & 998/Mds/2012.
5.	Judgment of Hon'ble Karnataka High Court in the case of CIT vs. Madan Theatres Ltd., GA.No.684 of 2013 dated 14.05.2013.

4. The learned D.R. on the other hand submitted that the assessee having furnished inaccurate particulars with regard to the value of the property being aware of the fact that the stamp valuation authority has valued the property at Rs.2,55,00,000 for stamp duty purpose has shown the value at lesser amount for the purpose of computing capital gain. Therefore, to that extent, there is furnishing of inaccurate particulars of income. The learned D.R. further submitted that the computation of capital gain by applying the provisions of section 50C in the case of the assessee having been upheld by the ITAT, imposition of penalty under section 271(1)(c) is justified.

5. We have considered the submissions of the parties and perused the materials available on record. As

can be seen from the facts and materials on record, while the assessee computed capital gain on the basis of sale consideration mentioned in the registered sale deed, the A.O. computed the capital gain by invoking the provisions of section 50C of the Act as the registering authority of the State Government has valued the property for the purpose of stamp duty at Rs.2.55 crores. Though, it may be a fact that the ITAT while deciding assessee's quantum appeal has upheld application of section 50C of the Act for the purpose of computation of capital gain but that itself will not lead to the conclusion that assessee either has furnished inaccurate particulars of income or concealed the particulars of income. As can be seen from the language of section 50C it is a deeming provision. In a case where A.O. finds that the value determined by the stamp duty authority for the purpose of stamp duty is more than the consideration claimed to have been received by the party, then the value adopted by the SRO shall be deemed to be the consideration received by the assessee for the purpose of computation of capital gain. Thus, for application of section 50C of the Act, it is not necessary for the A.O. to examine whether actually assessee has received anything over and above the amount mentioned in the sale deed as he simply has to go by the valuation adopted by the SRO. However, as far as imposition of penalty is concerned, there must be positive evidence before the A.O. to conclude that assessee has received the amount as valued by SRO for stamp duty purpose. Unless there are positive evidence to indicate

receipt of on money to the extent of valuation made by SRO by the assessee, penalty under section 271(1)(c) cannot be imposed. Further, in the present case as is evident from the materials on record, the assessee in the course of assessment proceeding has furnished all necessary and relevant documents relating to the transaction of the property in question including registered sale deed. The assessee has not suppressed any material fact from the notice of the A.O. In these circumstances, the imposition of penalty under section 271(1)(c) of the Act alleging furnishing of inaccurate particulars of income or concealment of income, in our view, is not appropriate. The ITAT, Mumbai Bench in the case of Renu Hingorani, Mumbai vs. ACIT, Range 19(3), Mumbai (supra) while considering identical nature of dispute, deleted the penalty under section 271(1)(c) of the Act by holding as under :

> *"8. We have considered the rival contentions and relevant record. We find that the AO had made addition of Rs.9,00,824/- being difference between the sale consideration as per sale agreement and the valuation made by the Stamp Valuation Authority. Thus, the addition has been made by the AO by applying the provisions of section 50C of the Act. It is evident from the assessment order that the AO has not questioned the actual consideration received by the assessee but the addition is made purely on the basis of deeming provisions of the Income Tax Act, 1961. The AO has not given any finding that the actual sale consideration is more than the sale consideration admitted and mentioned in the sale agreement. Thus it does*

> *not amount to concealment of Income or furnishing inaccurate particulars of income. It is also not the case of the revenue that the assessee has failed to furnish the relevant record as called by the AO to disclose the primary facts. The assessee has furnished all the relevant facts, documents/material including the sale agreement and the AO has not doubted the genuineness and validity of the documents produced before him and the sale consideration received by the assessee. Under these facts and circumstances, it cannot be said that the assessee has not furnished correct particulars of income. Merely because the assessee agreed for addition on the basis of valuation made by the Stamp Valuation Authority would not be a conclusive proof that the sale consideration as per this agreement was incorrect and wrong. Accordingly the addition because of the deeming provisions does not ipso facto attract the penalty u/s 271 (1)(c). Hence in view of the decision of the Hon'ble Supreme Court in the case of CIT Vis Reliance Petroproducts Pvt.Ltd (supra), the penalty levied u/s 271 (1)(c) is not sustainable. The same is deleted."*

5.1. The principles laid down in other decisions relied upon by Ld. A.R. also express similar view. Following the consistent view expressed in the decisions referred to above, we are of the opinion that imposition of penalty under section 271(1)(c) of the Act in the present case is not valid. Accordingly, we delete the penalty.

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

Order pronounced in the open Court on 04.09.2015.

Sd/-	**Sd/-**
(B. RAMAKOTAIAH)	**(SAKTIJIT DEY)**
ACOUNTANT MEMBER	**JUDICIAL MEMBER**

Hyderabad, Dated 04th September, 2015

VBP/-

Copy to :

1.	Bhavya Anant Udeshi, Hyderabad – 500 034. C/o. Gandhi & Gandhi, Chartered Accountants, 1002, Paigah Plaza, Basheerbagh, Hyderabad – 500 063.
2.	The Income Tax Officer (International Taxation)-I, 3rd Floor, Income Tax Towers, Masabtank, Hyderabad – 500 004.
3.	CIT(A)–X, Hyderabad.
4.	Chief CIT (IT) (SZ), Benggaluru
5.	CIT-(IT & TP), Hyderabad
6.	D.R. ITAT 'A' Bench, Hyderabad.
7.	Guard File