

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R.SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.130/Ahd/2022
Assessment Year :2015-16

Yashwant Amratlal Thakkar 19-20-21, 3 rd Floor Narayan Chambers B/h. Patang Hotel, Ashram Road Ahmedabad 380009. PAN : AAIPT 1697 G	Vs.	DCIT, Cent.Cir.1(1) Ahmedabad.
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(Applicant)		(Responent)
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Assessee by :	Shri Tushar Hemani, Sr.Advocate, & Shri Parimalsinh B. Parmar, AR
Revenue by :	Ms.Saumya Pandey Jain, Sr.DR

सुनवाई की तारीख/Date of Hearing : 13/07/2023
घोषणा की तारीख /Date of Pronouncement: 27/09/2023

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

This appeal has been filed by the Assessee against order passed by the Id.Commissioner of Income Tax(A)-11, Ahmedabad dated 28.2.2022 passed under section 271(1)(c) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] for the Asst.Year 2015-16.

2. Solitary issue raised in the grounds of appeal of the assessee is against levy of penalty under section 271(1)(c) of the Act amounting to Rs.44,21,729/- by the AO, which was confirmed by the Id.CIT(A) by way of the impugned order.

3. Short facts necessary for disposal of this appeal, which can be noticed from the relevant orders of the Revenue authorities are that in the case of the assessee, assessment was framed under section 143(3) of the Act, the AO made two additions viz. (i) short term capital gain of Rs.2,60,17,820/-, on the ground that the assessee has not brought on record any evidence to show that the shares of Amrapali Fincap Ltd were held for more than 36 months, which would allow the assessee the benefit of indexation on the cost of shares for computing long term capital gain, and thus treated as a fraudulent claim, and (ii) unexplained cash payment/receipt totaling to Rs.16,42,38,460/- (i.e. cash payment of 11,32,00,650/- to one Venus group, plus unexplained cash receipt of Rs.5,10,37,810/-) under section 69A/C of the Act on the basis of some incriminating material, viz. vouchers and receipts seized during the search at the premises of Venus group, which the AO presumed to be beneficial involvement of the assessee in the transaction.

4. Both these additions were challenged before the first appellate authority. The Id.CIT(A) deleted the addition made under section 69A/C of the Act, while addition made by the AO on account of short term capital gain of Rs.2,60,17,820/- was upheld. Against this order of the Id.CIT(A), both assessee and Revenue went in appeal before the Tribunal. The assessee was aggrieved by the confirmation of short term capital gain by the Id.CIT(A), while the Revenue was aggrieved by the deletion of addition made under section 69A/C of the Act.

During the pendency of appeals of the assessee and the Revenue before the Tribunal, the AO initiated penalty proceedings under section 271(1)(c) of the Act on the addition made on account of short term capital again of Rs.2,60,17,820/-, and after hearing

the assessee, the AO imposed penalty of Rs.44,21,729/- which was confirmed by the Id.CIT(A). Aggrieved by the action of the Id.CIT(A) in confirming the impugned penalty, the assessee filed the present appeal before the Tribunal.

5. At the outset, the Id.counsel for the assessee submitted that the quantum of appeals of the assessee and the Revenue was decided by the Tribunal in favour of the assessee and against the Revenue vide order dated 12.6.2023 in ITA No.2099/Ahd/2018 (assessee's appeal) and ITA No.2220/Ahd/2018 (Revenue's appeal) vide which, the Tribunal deleted the addition made on account of short term capital gain, and confirmed the action of the Id.CIT(A) in deleting the additions made under section 69A/C of the Act. Therefore, since the impugned penalty imposed on the addition of Rs.2,60,17,820/- made in respect of short term capital gain stands deleted, the imposition of penalty on the deleted addition is not sustainable, and the impugned order passed by the Revenue under section 271(1)(c) of the Act requires to be cancelled. The Id.counsel for the assessee filed a copy of order of the Tribunal cited (supra) where the addition on which the impugned penalty has been imposed was deleted. He drew our attention to para-12 of the Tribunal order dated 12.6.2023 deleting the impugned addition as under:

"12. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that it is the admitted position that the assessee was the beneficial owners of the shares held by the registered shareholders elaborated in the order of the authorities below. It is also not in doubt that the shares were acquired by the registered shareholders in the financial years 2008-09 and 2009-10 but the authorities below have taken the period of holding from the year in dispute and therefore worked out the income under the capital gain without giving the benefit of cost of indexation being short term capital gain. As such the revenue has worked out the short-term capital gain whereas the assessee claimed that it was long-term capital loss as the period of holding was more than 36 months. Thus, the limited controversy before us to

adjudicate what is the period of holding of the shares in the hands of the assessee. Once the revenue has admitted that the assessee was the beneficial owner of the shares then the period of holding to our understanding must be taken from the year in which the shares were held by the registered owners.

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12.1 Admittedly, the assessee has made necessary compliance under the Companies Act by furnishing the necessary declarations in the form MGT-4, MGT-5 and MGT-6 which were duly accepted by the competent authority i.e. Registrar of companies. Accordingly, we are of the view that the authorities below cannot interpret such declarations according to their understanding without pointing out any fault therein.

12.2 It is equally important to note that the two registered shareholders have admitted in the statements to having received money from the Amrapali group for making the investment. To this effect, the relevant finding of the AO in the assessment order is extracted below:

To ascertain the facts, letters u/s 133(6) of the I. T. Act were issued to Shri Rakesh B. Pate/ and Omrim Securities was issued from the file of Amrapali Fincap Ltd., which was under scrutiny before the undersigned for A. Y, 2015-16. In the said response to the said letter, Shri Rakesh B Pate/ has stated that he had provided accommodation entries in the form of investment in shares of Amrapali Fincap Ltd. to the tune of Rs. 31.24 Crores by way of investment in the shares of Amrapali Fincap Ltd. out of the funds provided by the promoter of Amrapali Fincap Ltd. He also submitted that investment in the name of various group concerns including the proprietary concern M/s. Bahar Traders were made out of funds layered through various group concern and group concern of Pratik R. Shah. In response to the letter u/s 133(6) of the act to Omrim Securities Ltd., Shri Rakesh B. Patel, on behalf of the company submitted exactly similar reply as in his individual capacity

12.3 Moreover, the assessee has also paid the taxes on the investment made by him in the name of registered shareholders out of his undisclosed income and therefore it will be inappropriate to allege that the transaction shown by the assessee represents the use of colorable device. Furthermore, the revenue while calculating the capital gain in the hands of the assessee has adopted the cost of acquisition shown in the name of the registered shareholders for the investment made in the shares in the years 2008-09 and 2009-10. Thus, a conjoint reading of the of all the above stated facts establishes that the period of holding while calculating the income under the head capital gain exceeds 36 months and therefore the assessee must be given the benefit of indexation cost. Hence, the ground of appeal of the assessee is hereby allowed.”

6. On due consideration of the facts and circumstances, and the submissions of both the parties, and the order of the ITAT cited (supra) we find, the Tribunal vide order dated 12.6.2023 (supra)

deleted the addition on which impugned penalty was levied u/s 271(1)(c) of the Act, therefore, there remains no basis for levy of penalty in the present case before us. Consequently, there being no legal basis for the imposition of the penalty in the present case, renders the impugned order *non-est* in the eyes of law, and we accordingly cancel the same.

Thus, the ground of the appeal of the assessee is allowed.

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

Order pronounced in the Court on 27th September, 2023 at Ahmedabad.

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 27/09/2023