IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 345 of 2014
Date of decision: 17.8.2015

Manpreet Kaur, Prop. M/s Lily's Creation Boutique
……Appellant.

Commissioner of Income Tax, Patiala

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHAR DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Deepak Aggarwal, Advocate for the appellant.
Ms. Savita Saxena, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. The assessee has preferred this appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 17.5.2013, Annexure A.3 passed by the Income Tax appellate Tribunal 'B' Bench, Chandigarh (in short, "the Tribunal") in ITA No.1223/CHD/2012 for the assessment year 2006-07, claiming following substantial questions of law:-

i) Whether in the present facts and circumstances of the case, the learned ITAT was justified in confirming the action of the authorities below in levying the penalty under Section 271(1)(c) on the disallowance of exemption under Section 54 for construction wherein the exemption under section 54 was allowed for purchase of plot, however the exemption under section 54 is available for the construction of residential house and not for the purchase of plot?

ii) Whether in the present facts and circumstances of the case, the learned ITAT was justified in confirming the action of the authorities below in levying the penalty under section 271(1)(c) on the disallowance of exemption under section 54 for construction?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant filed her return of income on 30.10.2006 declaring income amounting to ₹ 2,02,180/- as per detail given below:-

i)	Salary derived from M/s Malwa Gas Service	₹ 40,500/-
ii)	Boutique income	₹ 1,61,680/-
iii)	Capital gain after claiming exemption under section 54F	Nil

The Assessing officer passed order dated 31.8.2010, Annexure A.1 under section 143(3) of the Act making additions on various counts and disallowed the claim of exemption under section 54 of the Act on the income under the head 'Capital gains' generated from transfer of residential house on the ground that she had failed to furnish any evidence in respect of expenditure incurred on construction. She failed to prove that the amount incurred on construction was actually utilized. It was recorded by the assessing authority that the assessee had sold a residential house on 15.2.2006 for ₹ 27 lacs and after claiming exemption under Section 54F of the Act thereby claiming to have utilized in construction the whole of the sale proceeds upto 15.10.2006, net capital gain had been declared at nil.

Since the assessee had furnished inaccurate particulars of income in respect of long term capital gain, penalty proceedings under section 271(1)(c) of the Act had been initiated. Aggrieved by the order, the assessee went in appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 19.5.2009, the appeal was partly allowed. The issue of disallowance of exemption under Section 54 of the Act was decided against the appellant. Thereafter, the Assessing Officer passed order under Section 271 (1)(c) of the Act. Against the penalty order, the assessee went in appeal before the CIT(A) which was dismissed vide order dated 24.9.2012, Annexure A.2. Aggrieved by the order, the assessee filed appeal before the Tribunal. Vide order dated 17.5.2013, Annexure A.3, the Tribunal partly allowed the appeal. The issue of penalty under Section 271(1)(c) on disallowance of exemption claimed under Section 54 amounting to ₹ 8,52,979/- was upheld. Hence the instant appeal by the assessee.

3. We have heard learned counsel for the parties.

4. Learned counsel for the assessee-appellant submitted that there was no furnishing of inaccurate particulars with regard to claim under Section 54F of the Act. In such a situation, levy of penalty was unjustified. Support was drawn from judgments of the Apex Court in ***Commissioner of Income Tax, Madras vs.Khoday Eswarsa and Sons,*** (1972) 83 ITR 369 and ***Commissioner of Income Tax vs. Reliance Petroproducts Pvt. Limited,*** (2010) 322 ITR 158.

5. On the other hand, learned counsel for the revenue submitted that no evidence of construction was produced and the Assessing Officer, CIT(A) and the Tribunal had concurrently recorded a finding of fact that the

assessee had failed to produce bills or vouchers, proof of construction, the date of completion of construction in the absence of which levy of penalty was justified.

6. After hearing learned counsel for the parties, we do not find any merit in the appeal.

7. The Tribunal while affirming the findings of the Assessing Officer and the CIT(A) had recorded that the assessee had failed to produce bills or vouchers. She had also failed to produce any proof of construction and the date of completion of construction during the assessment proceedings. Merely reflecting the expenditure incurred on construction in the balance sheet alongwith the income tax return was not sufficient to establish the claim. It was noticed in para 16 as under:-

> "16. The third addition made in the hands of the assessee was on account of disallowance of exemption claimed under section 54 of the Act. The assessee in the return of income had claimed deduction under section 54F of the Act which during the course of assessment proceedings was revised to the claim of deduction under section 54 of the Act. The assessee had claimed to have invested ₹ 8,32,000/- in the purchase of plot on 2.6.2005 and in respect of investment in construction of the property at ₹ 24,30,000/-. The Assessing Officer allowed the investment made in plot at ₹ 8,23,000/- as allowance under section 54 of the Act. However, the exemption claimed in respect of expenditure incurred on construction was denied by the Assessing Officer as the assessee had failed to furnish any evidence in respect of the same during the assessment proceedings. The balance long term capital gains was brought to tax by the Assessing Officer. The CIT(appeals) upheld the additions as the assessee had failed to discharge the onus to submit the requisite proof in respect of expenditure made on

construction of house. Merely because the amount spent on expenditure made on construction of the property was reflected in the balance sheet filed alongwith the return of income does not establish the claim of the assessee as the assessee had failed to produce bills or vouchers or any proof of construction, date of completion, proof of construction during the assessment proceedings. The additional evidence was furnished by the assessee before the CIT(Appeals). Penalty under Section 271(1)(c) of the Act had been levied on account of said disallowance made under section 54 of the Act. We find no merit in the claim of the assessee that it is not exigible to levy of penalty under section 271(1)(c) of the Act on the aforesaid disallowance as the claim made by the assessee vis a vis the cost of construction in the immovable property was found to be a false claim and the assessee has failed to discharge the onus of establishing that it had undertaken the aforesaid construction of the immovable asset. Merely because the assessee had reflected certain amount of expenditure claimed to be on account of construction of property in its balance sheet does not entitle the assessee to the claim of deduction under section 54 of the Act being the amount spent on construction of the asset on sale of residential property. In the entirety of the facts and circumstances where the claim of the assessee was found to be false, the assessee is liable to penalty under section 271(1)(c) of the Act. Upholding the order of the CIT(appeals) we confirm levy of penalty under section 271(1)(c) of the Act on account of disallowance of deduction claimed under section 54 of the Act. Thus ground Nos. 1 and 2 raised by the assessee are allowed and ground No.3 raised by the assessee is dismissed."

8. The assessee had failed to substantiate the averments made in the appeal in support of her claim. The findings recorded by the authorities are pure findings of facts. Learned counsel for the assessee was unable to

point out any illegality or perversity in the said findings which may call for interference by this Court. The judgments cited by the learned counsel for the appellant being based on individual fact situation involved therein do not come to the rescue of the appellant. Thus, no advantage can be derived by the appellant from the said pronouncements. No substantial question of law arises. The appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

August 17, 2015
'gs'

(Shekhar Dhawan)
Judge