



**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E' NEW DLEHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 145/Del/2016  
Assessment Year: 2010-11**

Raj Kumar Bhutani,  
L/h of Late Veena Bhutani  
C/o Anil Sharma & Associates,  
G-8, Jain Bhawan, 18/12, Pusa  
Lane WEA Karol Bagh, New Delhi  
**PAN: ACMPB0172E**  
(Appellant)

Versus Income-tax Officer,  
Ward 22(2), New Delhi

(Respondent)

Appellant by : Sh. Rajiv Saxena, Ld. Adv.  
Sh. Dishant Sethi, Ld. Adv.  
Respondent by : Sh. Jeetender Chand, Ld.Sr. DR

Date of hearing : 19.12.2022  
Date of order : 30.12.2022

**ORDER**

**PER N.K. CHOUDHRY, J.M.**

This appeal has been preferred by the Assessee against the order dated 14.10.2015, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-10, New Delhi (in short "Ld. Commissioner") u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2010-11.

**2.** In the instant case, as per computation of income filed with the return of income by the assessee, the assessee had declared

Long-term Capital Gain (LTCG) as "nil" qua sale of two plots of land at Gurgaon and having made investments towards construction of residential house at New Friends Colony, Delhi. The Assessee claimed exemption u/s. 54F of the Act.

The Assessing Officer finally determined the capital gain to the tune of Rs.12,14,077/- and consequently, added the difference of Rs.12,14,077/- between the LTCG which was declared at "nil" and the LTCG determined by the Assessing Officer, in the total income of the Assessee. Subsequently, penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income were also initiated, which resulted into issuance of notice dated 23-07-2013 u/s. 271(1)(c) of the Act.

In response the Assessee claimed that the sum of Rs.12,14,077/- remained un-utilized due to the reason that the competent authority delayed the sanction of building plan of new residential house.

The said contention of the Assessee was rejected and found to be not acceptable by the Assessing Officer on the ground that no evidence in support of her contention has been filed. Secondly, on one hand, the Assessee had claimed to have invested Rs.78,48,548/- in the construction of the same house without sanctioning of building plan, then what prevented her from investing the additional amount. The Assessee further claimed that

she had invested more than the net consideration in the new residential house within the period of three years from the sale of original asset. The said contention of the Assessee was also found not acceptable by the Assessing Officer on the ground that the Assessee had not complied with the provisions of sub-section (4) of section 54F of the Act. As per provision of section 54F for claiming full exemption in respect of the LTCG, the Assessee ought to have utilized full amount of consideration in construction of the new asset or have deposited the same before furnishing of her return of income (before due date) in specified bank account. The Assessee further claimed before the AO that she had disclosed all the transactions of purchase and acquisition of new asset, on which LTCG arose at the time of filing of her return of income, so, penalty proceedings are not attracted. The said contention of the Assessee was also found not acceptable by the Assessing Officer on the ground that here, the issue is not about disclosing the transactions, but the issue is wrong claim of the Assessee u/s. 54F of the Act.

The Assessing Officer further observed that the Assessee has not filed any submissions on merits of the addition made by the Assessing Officer. She has also failed to substantiate that no inaccurate particulars of income were furnished in respect of the addition made by the Assessing Officer. Further, the Assessee has accepted the addition made by the Assessing Officer. It clearly

proves that she has tried to conceal true particulars of income/furnished inaccurate particulars of her income and has tried to understate the income deliberately. Thus, it is not a case of mere addition made by the Assessing Officer but the case of false declaration made by the Assessee. It is, therefore, clearly established that the Assessee has committed default of furnishing inaccurate particulars of income and is liable for imposition of penalty u/s. 271(1)(c) of the Act.

**3.** The Assessee preferred first appeal before the Id. Commissioner, who vide impugned order dismissed the appeal of the Assessee and confirmed the penalty imposed. More or less, the Id. Commissioner affirmed the penalty on the identical findings of the Assessing Officer as given in the penalty order. The Assessee, being aggrieved, is in appeal before us.

**4.** Heard both the parties and perused the material available on record. Hon'ble Apex Court in the case of Reliance Petro-products (P) Ltd. (2010) 322 ITR 158 (SC) has clearly held that "*mere making of the claim which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars relating to income of the assessee*". Further, it was held by the Hon'ble Apex Court that

*“merely because assessee had claimed expenditure, which claim was not accepted or was not acceptable to revenue, that by itself would not attract penalty under section 271(1)(c)”.*

The spirit behind the above dictum of the Hon'ble Apex Court is that though the Assessee has filed a claim which is not found acceptable by the Revenue, that ipso facto, would not lead to imposition of penalty until and unless the facts and action of the Assessee warrants the imposition of penalty.

In the instant case, the Assessee has clearly shown the amount of sale of the properties and investments made towards construction of residential house and bonafidely admitted that she had failed to deposit the entire consideration within time, however, she had paid the entire tax demand as computed by the Assessing Officer. Further, she could not spend or invest the consideration received as capital gain before filing the Income-tax Return, however, claim of exemption u/s. 54F of the Act has been made bonafidely, as she had utilized more than the sale consideration in the new property.

We observe as per section 54 of the Act, the Assessee was supposed to utilize full amount of net consideration in the construction of the new asset or to have deposited the same before furnishing the return of income (before due date) in the specified bank account in order to claim full exemption in respect of LTCG.

There is no doubt that the provisions of section 54F of the Act are benevolent provisions and therefore, requires liberal interpretation. In that sense, the Assessee is entitled to get the benefit of the benevolent provisions. It is a fact as not disputed by the Revenue Department that the Assessee had disclosed the transactions related to sale of the original assets and purchase/acquisition of new asset in the return of income itself. We are of the considered opinion just because the Assessee could not deposit the consideration amount/capital gain in specified bank account, that does not entail levy of penalty automatically. It is a fact that the Assessee.

*Considering the conduct of the Assessee in disclosing the transactions, admission of her fault for not utilizing the amount of capital gain and utilization of amount more than the capital gains in construction of the new asset within three years, paying of relevant taxes as determined by the Assessing Officer and bonafidely not filing any appeal against the denial of claim u/s. 54F of the Act by the Assessing Officer, we are unable to sustain the penalty of Rs.2,50,100/- imposed by the Assessing Officer and confirmed by the Id. Commissioner. Consequently we order for deletion of penalty.*

**6.** In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 30/12/2022.

Sd/-

**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)**  
**JUDICIAL MEMBER**

\*aks/-