



**THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 31.05.2013

+ ITA 279/2013

**COMMISSIONER OF INCOME-TAX DELHI-XV, NEW DELHI**

..... Appellant

versus

**SMT. NEENU DUTTA**

.... Respondent

**Advocates who appeared in this case:**

For the Appellant :Mr Kiran Babu

For the Respondent :Mr Salil Aggarwal with Mr Ravi Pratap Mall

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE VIBHU BAKHRU**

**JUDGMENT**

**VIBHU BAKHRU, J.**

1. This is an appeal filed on behalf of the revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the "Act"). The appellant herein has challenged the order dated 20.07.2012 passed by the Income Tax Appellate Tribunal in ITA No. 215/Del/2012 for the assessment year 2008-09. The controversy in the present case relates to levy of penalty by the Assessing Officer under Section 271(1)(c) of the Act.

2. The assessee filed a return under the Act for the assessment year 2008-09 on 30.09.2008 declaring an income of ₹ 78,83,303/-. The assessee did not include capital gains of ₹ 86,98,461/- that had resulted on account of the assessee exercising of stock options and the sale of the shares vested with the assessee pursuant the exercise of the Employees Stock Option (ESOP). The assessee did not include the said amount as gains were claimed to be long term capital gains.



3. The assessee was a senior executive with Citi Bank N.A. and had been granted the employee stock options by the employer on various dates from January 1998 to January 2004 during the course her of employment. The first employee stock option was granted to the assessee on 20.01.1998 and on the last option the stock option was granted on 20.01.2004. The employee stock options that were granted to the assessee were exercised by her on various dates. The employee stock option granted to the assessee on 20.01.1998, 2.11.1998, 13.02.2002, 12.02.2003 and 13.02.2002 was exercised by the assessee on 30.04.2007, 03.05.2007, 19.04.2007, 23.04.2007 and 13.07.2007 for 2680, 3431, 514, 600 and 128 nos. of shares respectively. The employee stock options granted to the assessee were cashless options and the shares vested with the assessee pursuant to the exercise of the options were liable to be sold and the net proceeds thereof remitted to the assessee. The shares vested with the assessee pursuant to the options exercised were sold on the date of exercise of options and after deducting the price at which the options were granted and the expenses for sale of shares, the balance proceeds were remitted to the assessee.

4. The return filed by the assessee was taken up for scrutiny and the Assessing Officer made an addition of ₹ 86,98,461/- to the income of the assessee on account of short term capital gains. The said addition was made by the Assessing Officer as he held that the gains arising out of exercising of options and sale of the shares of Citi Bank were not long term capital gains but short term capital gains inasmuch as shares were sold on the very same day on which the assessee exercised her ESOP. The date of grant of ESOP was not considered by the Assessing Officer as the date of acquisition of the capital asset sold by the assessee. The assessee contended that although the assessment raised were contentious she decided not to contest the assessment order in order to avoid litigation and to buy peace. The assessee also wrote a letter dated 06.12.2010



accepting the view of the department and surrendering her right to contest the issue on the condition that no penalty under Section 271(1)(c) of the Act would be imposed on her.

5. The Assessing Officer thereafter commenced penalty proceedings and passed an order dated 29.06.2011 imposing a penalty of ₹ 29,56,610/- which was calculated on 100% of the incremental tax payable on the addition made by the Assessing Officer.

6. The assessee preferred an appeal before CIT (Appeals) challenging the levy of penalty under Section 271(1)(c) of the Act. It was contended by the assessee that the assessee considered the gains arising out of the exercise of ESOP as long term capital gains taking the date of grant of ESOP as the date of acquisition of the asset sold. The assessee invested ₹ 1 crore in October 2007 with Cedarhills Hospitality Pvt. Ltd and showed the entire amount received by the assessee as having been invested in construction of a residential house. The assessee thus, claimed the capital gains to be exempted under Section 54F of the Act. The assessee contended that she was advised that the amount received for sales by her on account of exercise of option was not taxable as the gains were long terms capital gains and the same had been invested in acquiring a residential house.

7. It was contended on behalf of the assessee that making a wrong claim would not be a ground for imposing penalty under Section 271(1)(c) of the Act as the same did not amount to furnishing inaccurate particulars or concealment of income as the assessee had disclosed all material facts and had claimed exemption under section 54F of the Act based on legal advice that gains from exercise of options would not be taxed. The CIT (Appeals) accepted the contentions of the assessee and set aside the order of penalty dated 29.06.2011.



8. The revenue preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal relying on the decision of the Supreme Court in the case of *Commissioner of Income Tax v. Reliance Petro Product Pvt. Ltd.*: [2010] 322 ITR 158 upheld the decision of CIT (Appeals) that merely making a wrong claim could not be a ground for imposing a penalty under Section 271(1)(c) of the Act.

9. We are in complete agreement with the decision of the CIT (Appeals) and the Income Tax Appellate Tribunal that this is not a case which would attract penalty under Section 271(1)(c) of the Act. The question whether gains arising out of exercise of cashless options was long term capital gains or short term capital gains could have been a contentious issue at the material time. Further the facts of this case do not indicate that the assessee had furnished inaccurate particulars or concealed income.

10. This court has also considered the issue of penalty in a similar situation in the case of *Commissioner of Income Tax v. Jaswinder Singh Ahuja*: ITA No. 81/2013 decided on 08.02.2013.

11. Following the aforesaid judgements, we do not find that any substantial question of law is raised in the present appeal. Consequently, the appeal is dismissed. There shall be no order as to costs.

**VIBHU BAKHRU, J**

**BADAR DURREZ AHMED, J**

**MAY 31, 2013**

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