

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
(Hearing in Virtual Court)

S.N.	I.T.A No.	AY:	Appellant	Vs	Respondent
1	55/SRT/2017	2007-08	Jasuben Chhanabhai Ahir, Near Primary School, Village Hazira, Taluka Choryasi, Surat PAN: B DJP 1896 F	Vs	ITO Wd-2(1)(2), Aayakar Bhawan, Majura Gate, Surat
2	56/SRT/2017	2007-08	Sukhabhai Gopalbhai Ahir, Village Hazira, Taluka Choryasi, Surat PAN: A G O P A 9733 E	Vs	ITO Wd-2(1)(2), Aayakar Bhawan, Majura Gate, Surat
3	57/SRT/2017	2007-08	Nanubhai Sukhabhai Ahir, Village Hazira, Taluka Choryasi, Surat PAN: A E S P A 5558 F	Vs	ITO Wd-2(1)(3) Aayakar Bhawan, Majura Gage, Surat
4	58/SRT/2017	2007-08	Nandiben Sukhabhai Ahir Gundardi, Village Hazira, Taluka Choryasi , Surat PAN: B C S P A 8828 D	Vs	ITO Wd-2(1)(2) Aayakar Bhawan, Majura Gage, Surat

5	59/SRT/2017	2007-08	Praveenbhai Sukhabhai Ahir, Village Hazira, Taluka Choryasi, Surat PAN: AGOPA 9732 F	Vs	ITO Wd-2(1)(3) Aayakar Bhawan, Majura Gage, Surat
6	60/SRT/2017	2007-08	Sushilaben Pravinbhai Ahir, Village Hazira Taluka Choryasi, Surat PAN: AGOPA 9733E	Vs	ITO Wd-2(1)(2) Aayakar Bhawan, Majura Gage, Surat
7	62/SRT/2017	2007-08	Hiteshbhai Chhanabhai Ahir, Village Hazira Taluka Choryasi, Surat PAN: AQFPA 9611E	Vs	ITO Wd-2(1)(2) Aayakar Bhawan, Majura Gage, Surat
8	63/SRT/2017	2007-08	Prakashbhai Chhanabhai Ahir Village -Hazira, Taluka: Choryasi, Dist.Surat-394270 PAN:AUCPA 3392 B	Vs	ITO Wd-2(1)(3) Aaykar Bhawan, Majura Gate, Surat-395001

Assessee by	None
Revenue by	Sh. J.K. Chandani Sr. Departmental Representative (DR)

S. N.	I.T.A No.	AY:	Appellant	Vs	Respondent
9	222/SRT/2017	2007-08	Kantibhai Chhaganbhai Khalasi, New Street, Taluka Choryasi, Village Hazira, Surat-395007 PAN: ARLPK 4908 P	Vs	ITO Wd-2(1)(2), Aayakar Bhawan, Majura Gate, Surat
10	221/SRT/2017	2007-08	Saradkumar Kantilal Khalasi, Mata falia, Tluka Choryasi, District Surat-395007. PAN: AKQPP4482 M	Vs	ITO Wd-2(1)(2), Aayakar Bhawan, Majura Gate, Surat

Assessee by	Shri Rasesh Shah, C.A
Revenue by	Sh. J.K. Chandani Sr. Departmental Representative (DR)
Date of hearing:	02.05.2022
Pronounced on	02.05.2022

आदेश / O R D E R

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH JUDICIAL MEMBER:

1. This group of fifteen (10) appeal(s), are part of Hazira Land Acquisition cases, all relates to penalty levied under section

271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. Facts as extracted from the orders of the lower authorities are that the land of aforesaid individual assesseees were acquired by Special Land Acquisition Officer, Surat for M/s Essar Steel Ltd. The Revenue / Assessing Officer made re-opening in all cases under section 147 of the Act. Assessment was completed under section 143(3) r.w.s. 147 of the Act in cases of all different assesseees. The Assessing Officer while passing the separate assessment orders made addition on account of Long Term Capital Gains (LTCG) on transfer of land, capital gain on the certain amount received for permanent (pacca) structure was treated as income from other sources and in some cases the agriculture income was treated as income from undisclosed sources. The assessing officer levied penalty under section 271(1)(c) on various additions. The Assessing officer levied penalty @100% of tax sought to be evaded. On appeal the Ld. CIT(A) upheld the action of assessing officer. Thus, further aggrieved the assessee(s) have filed present appeal before this Tribunal.

3. None appeared on behalf of assessee in appeal(s) mentioned at serial No. 1 to 8, despite the service of notice of hearing.
4. Sh. Rasesh Shah learned authorised representative (AR) of the assessee appeared in appeal at serial No. 9 & 10. We have heard the submissions of learned authorised representative of the assessee(s) and the learned departmental representative for the revenue and have gone through the orders of the lower authorities. The ld AR of the assessee submits that in all quantum assessment appeals of the Hazira land appeals/ cases either the additions has been deleted or in some cases the additions on accounts of capital gain for the receipt against the pucca structure has been sustained only on estimation basis. The penalty in lead case of Ambaben J Patel has also been deleted. Thus, the grounds of appeal raised by him in two cases are covered. The ld AR for the assessee further submits that in other penalty appeals under section 271(1)(c), all penalty has been delated vide order dated 26.04.2022 in 15 similar appeals.
5. On the other hand the learned DR for the revenue supported the order of assessing officer and ld CIT(A).

6. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully in quantum assessment as well as in penalty matters. We find that against various additions made in the assessment, the assessee(s) filed appeal before Ld. CIT(A). The Ld. CIT(A) in quantum assessment, upheld the addition of capital gain on transfer of land. However, the income added under the head “income from other sources” against the pucca structure was changed to as “income from capital gains”. As the assessees were not allowed the cost of acquisition and improvement on permanent structure, they were allowed 50% as cost of construction or improvement, received against permanent structure and the additions on account of undisclosed source was treated as income form agriculture activities.
7. On further appeal before Tribunal, the Tribunal held that addition of capital gain on account of transfer of land/ acquisition of land is not taxable as the said land / impugned land is not ‘capital asset’ as defined under section 2(14)(iii)(a) of the Act. The land transferred by individual assessee(s) does not falls in the Municipal Area. Hazira Notified area is not a

Municipal area or deemed municipal area, therefore, the receipt/ gain on transfer of land is not taxable under Income tax Act. Further, the assessee on their alternative pleas were also held eligible for exemption under section 10(37) of the Act as the land was compulsorily acquired by Government of Gujarat by completing statutory formalities under Land Acquisition Act, 1882. The land was used for agriculture purpose for two years prior to its acquisition. And the assessee(s) fulfilled all the requisite condition for seeking exemption under section 10(37) of the Act. The other addition made under the head “capital gains” against the cost of pucca structure, the assessee’s were allowed 60% as cost of acquisition or cost of improvement, against the relief of 50% as allowed by Ld. CIT(A). Further, in some cases, the agricultural income offered by assessee(s) were treated as “income from other sources” has been held as “income from agricultural activities”. Thus, in quantum appeals all the assessee was granted substantial relief in deleting major part of additions and only part of capital gains only on account of cost of improvement on pucca structure was partly upheld on estimation basis.

Therefore, all substantial additions were either deleted or upheld only on estimation basis. In our considered view no penalty under section 271(1)(c) of the Act is leviable on all the assessee(s). In the result, the grounds of appeal raised by the assessee(s) are allowed.

8. In the result, all the appeals filed against the levy of penalty under section 271(1)(c) are allowed. Copy of this order be placed in all respective files.

Order pronounced in the open court on 02nd May 2022 and the result was also placed on the notice board.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 02/05/2022
Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

// True Copy //

Assistant Registrar, ITAT, Surat