

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, CHENNAI**

श्री संजय अरोड़ा, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER  
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ I.T.A. No. 1482/Mds/2016

निर्धारण वर्ष/Assessment Year : 2011-12

M/s. Surabi Bullion,  
No. 405, Surya Complex,  
Big Bazaar Street,  
Coimbatore - 641 001.

Pr. Commissioner of Income Tax,  
Vs. Central - 2,  
Chennai.

**[PAN: ABRFS 7669H]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/Appellant by

: Shri S. Paramasivam, IT Practitioner

प्रत्यर्थी की ओर से/Respondent by

: Shri Pathlaveth Peerya

सुनवाई की तारीख/Date of Hearing

: 01.12.2016

घोषणा की तारीख/Date of Pronouncement

: 01.03.2017

**आदेश / O R D E R**

**PER BENCH:**

The assessee has filed an appeal against the order of Pr. Commissioner of Income Tax (Appeals), Chennai in C. No. 2744/C-2/2015-16/12 dated 18.04.2016 passed u/s. 263 of the Income Tax Act.

2. The assessee has raised grounds no. 2 to 22 against the Revision order of Pr. CIT is bad in law and cannot be sustained.

3. The Brief facts of the case are that the assessee is a partnership firm and in the Business of Trading Bullion. The search operations u/s. 132 of the Act was conducted on the two partners of the firm dealing in Bullion on 24.09.2012 and cash was seized. On perusal of the accounts of the partnership firm, the Revenue found the closing stock of the firm was undervalued to the extent of 12,02,598/- and the partner has agreed to offer unaccounted income for the assessment year 2011-12 and notice u/s. 153C of the Act was issued to the assessee firm as referred at page 2 of the assessment order. In compliance to the notice 143(2) of the Act, the Ld. AR of the assessee appeared from time to time and the case was discussed and declared Rs. 12,02,598/- as additional income under other sources and Return of income was filed for the assessment year 2011-12 on 18.07.2013. Whereas, the original return of income was filed on 30.08.2011 with total income of Rs. 9,09,980/-. The Ld. AR explained that due to accounting errors there is increase/decrease in stock value and the assessee has accepted the proposed addition with an open mind and willing to co-operate with the Department. The Assessing Officer found debit balance in the capital accounts and interest 12% was charged on partners debit balance and Assessing Officer made addition of stock u/s. 153A of the Act Rs. 12,02,598/- and interest on debit balance Rs. 23,947/- and Assessed total income of Rs. 21,36,525/- and passed order on 31.07.2014. Subsequently,

Assessing Officer initiated penalty proceedings and assessee has filed detail explanations and the reasons and prayed for dropping of the penalty and relied on the judicial decisions. The Ld. AO considered the reply and dropped the penalty proceedings u/s. 271(1)(c) of the Act. Subsequently, the Pr. CIT on perusal of records found that the Assessing Officer action of dropping of penalty is erroneous and prejudicial to the interest of the Revenue, and issued notice initiating Revision proceedings. The assessee filed reply referred at page 10 to 18 of paper book and the Ld. Pr. CIT on perusal of record of the original assessment proceedings observed that the assessee has not offered additional income at the time of filing the Return and relied on the legal decisions and the provisions of the Act and submissions recorded at Page 7 to 15 of the order and distinguished the decisions relied by the Assessing Officer and came to a unilateral conclusion that the action of Assessing Officer in dropping the penalty proceedings is erroneous and prejudicial to the interest of the Revenue and Direct the Assessing Officer to pass the fresh order u/s. 271(1)(c) of the Act vide order passed on 18.04.2016.

3. Aggrieved by the order of the Pr. CIT, assessee filed an appeal before the Tribunal. In the Appellate proceedings the Ld. AR argued that the Pr. CIT order does not satisfy twin conditions required u/s. 263 of the Act being erroneous and prejudicial to the interest of the Revenue. The fact remains that the assessee has filed the original return of income and subsequently u/s. 153(A) of the Act has offered the additional income and supported the arguments with

the decisions of co-ordinate bench of the Tribunal in Chennai Hotels (India) Pvt. Ltd., Vs ACIT, 1000 to 1004/Mds/2012 for the assessment year 2001-02, Sri Raajkumar Jain Vs ACIT in ITA No. 575/Hyd/2012 and Cosmo Films Ltd., Vs ACIT in ITA No. 2192/Del/2010 and emphasized on the applicability of provisions of law and prayed for allowing the appeal. Contra, the Id. DR relied on the order of the Pr. CIT and prayed for dismissing the appeal.

4. We have heard the parties, and perused the material on record. That the competent authority is u/s. 263 of the Act empowered to revise a penalty order is no longer *res integra*, with there being in fact no bar for the same in the clear language of the provision, and toward which the Ld. Pr. CIT has referred to the decisions in *R.A. Himmatsingka and Co. vs. CIT* [2010] 340 ITR 253 (Patna) and *CIT vs. Braj Bhushan Cold Storage* [2005] 275 ITR 360 (All). That the power stands exercised in respect of an order dropping penalty, i.e., where per a speaking order, as in the instant case, makes it that much more amenable to revision, as stands clarified by the Apex court in *Toyota Motor Corporation vs. CIT* [2008] 306 ITR 52 (SC).

5. Coming to the facts of the case, the assessee was during the course of the search proceedings u/s. 132(1) (on the partners of the assessee-firm) on 24.09.2012, found to have under-stated the closing stock with it as on 31.03.2011, by Rs. 12,02,598/- and, accordingly, of having under-stated its' income for the relevant assessment year by the said amount. This, apart from

being admitted per a sworn statement by the partner at the time of search, was subsequently included in the return filed on 18.07.2013, i.e., in response to the notice u/s. 153C, enhancing its income as original by returned on 30.08.2011 by Rs. 12.03 lakhs, i.e., on account of the understatement aforesaid. The said return can, by no stretch of imagination, be regarded as either voluntary or revised – of which being voluntary is an essential ingredient (ref: *CIT vs Dr. A. Mohd. Abdul Khadir* [2003] 260 ITR 650 (Mad)), with, rather, the law deeming the assessee under such circumstances to have concealed or furnished inaccurate particulars of income under *Explanation 5A* to section 271(1)(c).

6. The only question therefore that arises is as to the basis of the dropping of the penalty proceedings, after initiating the same, by the AO, and for which we find no reason in his order dropping penalty, which is by way of an order sheet entry dated 14.10.2014 (copy on record). This also stands emphasized by the Ld. Pr. CIT, i.e., of being clueless about the reason/s for dropping the penalty. There is again no question of the AO being presumed to have taken a possible view in the matter, the expression of which (view) is conspicuous by its absence. The levy of penalty, it is well settled, has to be with reference to the original return. Then, again, the argument of the addition being revenue neutral is to no consequence as each year is an independent unit of assessment. In fact, an increase in the opening stock (for the immediately succeeding year) would normally imply valuation of the closing stock for that year also on the same basis and, thus, at a corresponding increase. There is no estoppel against law, so that

proceedings, validly initiated, have to reach their logical conclusion in law, and which shall include reference to *Explanation 5A* (supra) as well as meeting the decision in *MAK DATA P. Ltd. vs CIT* [2013] 358 ITR 593 (SC) – to which abundant reference has been made by the Ld. Pr. CIT(A), besides others by the Apex court settling the law on penalty u/s. 271(1)(c) of the Act.

7. We accordingly find no infirmity whatsoever in the impugned order cancelling the order dropping penalty proceedings from the stage of reply to the show cause notice issued for the levy of penalty, and adjudicating afresh in accordance with law. We decide accordingly, declining interference.

8. In the result, appeal by the assessee is dismissed.

Order pronounced on Wednesday, the 1st day of March, 2017 at Chennai.

**Sd/-**

(संजय अरोड़ा)

**(SANJAY ARORA)**

**लेखा सदस्य /ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 01st March, 2017

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                        |                          |                              |
|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |

**Sd/-**

(जी. पवन कुमार)

**(G. PAVAN KUMAR)**

**न्यायिक सदस्य/JUDICIAL MEMBER**