

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos. 752 & 753/Mds/2012  
निर्धारण वर्ष / Assessment Years : 2004-05 & 2005-6

Smt. R. Jansi Rani,  
C/o. Shri S. Sridhar,  
Advocate,  
New No.14, Old No.82, Flat No.5,  
1<sup>st</sup> Avenue, Indira Nagar, Adyar,  
Chennai – 600 020.

v. The Assistant Commissioner of  
Income Tax,  
Central Circle III,  
Madurai.

PAN : ABVPJ3973D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/ Respondent by : Shri R. Durai Pandian, Sr.AR

सुनवाई की तारीख/Date of Hearing : 22.12.2016

घोषणा की तारीख/Date of Pronouncement : 27.12.2016

**आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

These appeals of the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-II (i/c), Madurai dated 20.01.2012 and pertains to the assessment years 2004-05 & 2005-06. Since common issue arises for consideration in both the appeals, we heard the same together and disposing of the same by this common order.

2. Shri S. Sridhar, the Ld. Counsel for the assessee submitted that the Assessing Officer levied penalty of ₹1,25,000/- for each assessment year. The assessee is a director of M/s. Susee Cars & Trucks (P) Ltd., and M/s. Susee Motors. There was a search operation in the premises of the assessee on 04.06.2006. The assessee infact filed the return of income for the assessment year 2004-05 on 12.10.2004 disclosing a taxable income of ₹56,630/- and agricultural income of ₹90,110/-. Consequent to the search operation, the assessee filed return under Section 153A(a) of the Income Tax Act, 1961 (in short 'the Act') disclosing the very same income which was admitted in the earlier return on 12.10.2004. The Assessing Officer however by an order dated 18.12.2004 computed the total income at ₹3,13,754/- which includes undisclosed income of ₹2,57,127/-. According to the Ld. Counsel, the assessee infact invested in shares / securities to the extent of ₹2,49,455/-. The Assessing Officer found that the assessee has not accounted the investment made in shares / securities and accordingly levied penalty. The Ld. Counsel for the assessee submitted that there is no provision in the return of income for disclosing the investment. When there is no provision in the return of income, it cannot be said that the assessee has concealed any part of the income. The fact that Form 15H was filed shows that the assessee disclosed the investment to the concerned authorities. Therefore it cannot be said that there is a concealment of income.

3. On the contrary, Shri R. Durai Pandian, the Ld. Departmental Representative submitted that the assessee has not disclosed the investment made in shares and securities while filing return of

income in response to issue of notice under Section 153A(a) of the Act. Therefore the assessee has concealed part of income. Hence the Assessing Officer has rightly found that the income of the assessee was not disclosed for taxation.

4. We have considered the rival submissions on either side and perused the material available on record. From the material available on record, it appears the assessee has filed Form 15H before the relevant authorities. Therefore the investment made by the assessee in the shares and securities was within the knowledge of the concerned authorities. Had the intention of the assessee was to withhold the information from the income tax authorities, the assessee would not have filed Form 15H before the concerned authorities. Having filed the Form 15H before the authorities, the omission to declare the income from such investment is only the inadvertent error on the part of the assessee. Moreover, the penalty was levied only ₹1,25,000/- for each of the assessment years. Having found that the omission to include the income from such securities / shares is only inadvertent error and no column was provided by the CBDT for disclosing the investment in the shares and debentures, this Tribunal is of the considerable opinion that levy of penalty under Section 271(1)(c) of the Act is not justified. Accordingly, the orders of both the authorities below are set aside and the penalty levied by the Assessing Officer for both the assessment years is deleted.

5. In the result, the appeal of the assessee stand allowed.

Order pronounced on 27<sup>th</sup> December, 2016 at Chennai.

Sd/-  
(डि.एस. सुन्दर सिंह)  
(D.S. Sunder Singh)  
लेखा सदस्य/Accountant Member

Sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 27<sup>th</sup> December, 2016.

JR.

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.