

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.644/Mds/2015

निर्धारण वर्ष / Assessment Year : 2008-09

Sri Chellayan Davidsamraj,  
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 Income Tax Officer,  
Business Ward XIII(2),  
Chennai - 600 034.

PAN : AAHPD 7938 B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

प्रत्यर्थी की ओर से/Respondent by : Shri Durai Pandian, JCIT

सुनवाई की तारीख/Date of Hearing : 24.08.2016

घोषणा की तारीख/Date of Pronouncement : 23.09.2016

### **आदेश / O R D E R**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

This appeal of the assessee is against the order of the Commissioner of Income Tax (Appeals) – 12, Chennai, dated 13.02.2015, wherein the Ld. CIT(Appeals) confirmed the penalty

levied by the Assessing Officer under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') for non-pursuing of the appeal.

2. The facts in brief are that the assessee is involved in fabrication and erection of material handling systems for industries. The assessee is also involved in renting out cranes for industrial purposes. For assessment year 2008-09, he admitted certain turnover in "cash system of accounting". The Assessing Officer found difference between the total payment mentioned in the TDS certificates and gross receipt admitted by the assessee. The assessee has claimed full credit for the TDS. For the shortfall in admission of income, the assessee claimed that he was following cash system of accounting and accounted only actual receipts. The Assessing Officer did not accept such claim and assessed the total receipts shown in the TDS certificates as turnover and initiated penalty proceeding under Section 271(1)(c) of the Act. He levied penalty under that section for having furnished inaccurate / false particulars of income and the concealment of income to the tune of ₹27,95,029/-.

3. Aggrieved against the penalty order, the assessee filed an appeal before the erstwhile CIT(Appeals)-III, Chennai and consequent to the jurisdictional change, the Ld. CIT(Appeals) – 12, Chennai, confirmed the penalty order for non-pursuing of the appeal.

4. Aggrieved against the order of the CIT(Appeals), the assessee is in appeal before this Tribunal. The grounds of appeal are extracted as under:-

- (1) The order of the Commissioner of Income Tax (Appeals) 12, Chennai-600 034 dated 13.02.2014 in I.T.A. No.56/ 2013-14 for the above mentioned assessment year is contrary to law, facts, and in the circumstances of the case.
- (2) The CIT(Appeals) erred in confirming the levy of penalty u/s 271(1)(c) of the Act without assigning proper reasons and justification and ought to have appreciated that the sustenance of the penalty imposed was wrong, erroneous, unjustified, incorrect and not sustainable in law.
- (3) The CIT(Appeals) failed to appreciate that the order imposing penalty u/s 271(1)(c) of the Act was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.
- (4) The CIT(Appeals) erred in dismissing the appeal in limini for the reasons stated from para 5 to para 5.5 of the impugned order without assigning proper reasons and justification and ought to have

appreciated that the order passed in gross violation of the principles of natural justice is nullity in law.

- (5) The CIT(Appeals) failed to appreciate that there was no power vested in the statute to dismiss the appeal in limini and ought to have appreciated that non passing of the Appellate Order on merits would vitiate his decision completely.

5. Apart from the above grounds, the Ld.counsel for the assessee submitted that confirming the levy of penalty without due opportunity is unjustified. Per contra, the Ld. Departmental Representative relied on the order of the Ld. CIT(Appeals).

6. We have heard submissions on either side and perused the relevant material available on record. We are of the opinion that the Ld. CIT(Appeals) should give due opportunity to the assessee before confirming the penalty order. Hence, the issue is remitted back to the file of the Ld. CIT(Appeals) for giving adequate opportunity to the assessee and then pass an appropriate order.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 23<sup>rd</sup> September, 2016 at Chennai.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 23<sup>rd</sup> September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-12, Chennai-34
4. आयकर आयुक्त/CIT, Chennai-3, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.