

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

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

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2607/Mds/2014

निर्धारण वर्ष /Assessment year : 2009-2010

S. Badri  
L/H. Late Smt. S. Gokulammal,  
532, Vysial Street,  
Coimbatore

**Vs.** The Income Tax Officer,  
Ward III(3)  
Coimbatore

**[PAN AAWPG 7891D]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Shri. K. Raghu, C.A.  
: Shri. A.V. Sreekanth, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 12-04-2016

घोषणा की तारीख /Date of Pronouncement

: 24-05-2016

**आदेश / ORDER**

**PER G. PAVAN KUMAR, JUDICIAL MEMBER:**

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-I, Coimbatore in ITA No.31/2012-2013, dt 22.08.2014 for the assessment year 2009-2010 passed u/s.271(1)(c) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The assessee has raised substantive ground that Commissioner of Income Tax (Appeals) has erred in confirming levy of penalty ₹13,05,300/- u/s.271(1)(c) of the Act without appreciating bank accounts and the non disclosure of transaction in Balance Sheet is not willful and wonton.

3. The Brief facts of the case, the assessee is a Senior Citizen and filed her return of income for the assessment year 2009-2010 admitting total income of ₹7,42,540/- and same was processed u/s.143(1) of the Act . The case was selected for scrutiny and notice u/s.143(2) of the act was issued. In compliance to above notice, the Id. Authorised Representative of assessee appeared and filed details for verification. The Id. Assessing Officer alleged that as per the Annual Information Report (AIR) the assessee has made cash deposits aggregating to ₹45,01,000/- with The Lakshmi Vilas Bank Ltd, R.S.Puram branch, Coimbatore and was asked to file explanations in the assessment proceedings. The Id. Authorised Representative explained that the assessee has omitted to enter cash deposits in the cash book and she was not in a position to pinpoint accurately the sources and nature of the deposits further to buy peace with the Department filed letter dated 22.11.2011 offering voluntarily the entire deposits for taxation and paid tax liability of ₹15,00,000/-. The

Assessing Officer completed the assessment as unexplained investments and passed order u/s.143(3) of the Act dated 23.11.2011. The Id. Assessing Officer also initiated penalty proceedings by issue of notice u/s.274 r.w.s 271(1)(c) of the Act. In compliance to notice, the Id. Authorised Representative of assessee appeared and filed reply on submissions of the assessment proceedings and acceptance of income voluntary in good faith by the assessee and paid tax liability ₹15,00,000/- before completion of assessment. The Id. Authorised Representative submissions referred at page 3 of the order explaining the above reasons for omission to disclose in the balance sheet was not wanton Act nor willful Act and supported the contentions with judicial decisions as under:-

*"The assessee's AR, in response to the penalty proceedings initiated under the above mentioned provisions of the Act, has filed a reply dated 28.03.2012 stating that the assessee has voluntarily disclosed the income which ought to have been admitted in the original return of income filed before detection by the department and that she has also agreed to the addition of ₹.45,01,000/- by herself. He also replied that as the assessee herself made the disclosure of the unaccounted income for assessment at the time of scrutiny proceedings before detection by the department, she cannot be treated as an assessee who has concealed particulars of income or furnished inaccurate particulars of such income. He also replied that the assessee has not concealed her income or furnished inaccurate particulars of her income.*

*He prayed that the penalty proceedings initiated under the said provisions of the Act may be dropped in view of the decisions of the Hon 'ble High Court, Madras in the case of CIT vs. S.I.Paripushpam reported in 249 ITR 550 and the Hon'ble High Court, Delhi in the case of CIT vs. Kohinoor Impex Pvt Ltd. reported in 270 ITR 381. The AR has also stated in the reply that the tax dues on the addition made by the AO have been fully paid, accepting the additions.*

*As there was a change in incumbent, the case was once again posted for hearing and the AR, in response, appeared on 21.05.2012 and reiterated the same what was stated in his reply dated above. A short adjournment was sought by him to submit a detailed reply on the penalty proceedings. Accordingly, the case posted for hearing to 29.05.2012. However, the assessee or her AR has not appeared before this office for submission of reply as promised.*

*The reply filed by the assessee's AR was perused and his oral submissions were considered. The AR's contention is that the assessee has voluntarily offered the income of Rs. 45,01 ,000/- for assessment before detection by the department and that the AO has made the addition on agreed basis. The submissions made by the AR are not acceptable. As already stated, the assessee filed her original return of income for the assessment year under consideration on 29.07.2009 and scrutiny notice in her case was issued on 30.08.2010. The period between the dates mentioned above, the assessee had chosen not to file any revised return of income admitting the income omitted in the original return of income tiled. The assessee had disclosed all her bank accounts held during the financial year 2008-09*

*along with the details of balance at her credit as on 31.03.2009 in her regular books of account except the savings bank account held by her with Lakshmi Vilas bank.*

*On a perusal of the statement of account of the assessee's savings bank account with the said bank, it is seen that a total cash deposit of Rs. 45,01,0001- has been made during the months of February and March 2009. This is a huge transaction which would not be omitted to disclose in the regular books of account maintained by any prudent tax payer. However, the assessee had not only omitted the said bank account in her regular books of account maintained but also not rectified the omission of income by filing a revised return of income before issue of notice u/s 143(2) of the Act in her case or detection by the department. As could be seen from the facts discussed in the order, the assessee has not offered any explanation for omission of the Lakshmi Vilas Bank account and the sources of income for the deposits made into her account at the time of scrutiny. It is undoubtedly established that the assessee's intention was not to disclose the Lakshmi Vilas Bank account and that the offer of income being the amount deposited in the savings bank account with the Lakshmi Vilas Bank is not voluntary. The assessee had no choice but to accept the addition made by the Assessing Officer.*

*The offer of income during the scrutiny cannot be considered as voluntary as the assessee admitted the income only after the receipt of scrutiny notice from the department. Even when the assessee was to make a surrender it must adduce sufficient explanation for previous omission so as to protect itself against action*

*u/s 27J(J)(c) of the Act as held by the Hon'ble High Court, Kerala in the case of CIT Vs Kerala Transport Company 270 ITR 149. The AR stated in the reply that the penalty u/s 27.1 (I)(c) of the Act cannot be levied in the case of the assessee as per the decisions of the Hon'ble High Court, Madras in the case of CIT Vs. S.I Paripushpam reported in 249 ITR 550 and the Hon'ble High Court, Delhi in the case of CIT vs. Kohinoor Impex Pvt Ltd. reported in 270 ITR 381. The facts of the present case are totally different from the decisions in the above reported cases”.*

The Id. Assessing Officer though accepted the submissions and is of the opinion that assessee has concealed income and acceptance of income after receipt of notice u/s.143(2) of the Act cannot be a ground further relied on the judicial decision of Apex Court and levied minimum penalty of ₹13,50,300/-. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

**4.** In the appellate proceedings, Id. Commissioner of Income Tax (Appeals) considered the directions of the Co-Ordinate Bench in ITA No.1500/Mds/2013, dated 22.04.2014, where the matter was remitted to Commissioner of Income Tax (Appeals), Coimbatore with a direction to include legal heirs and dispose off the appeal on merits as Smt. S. Gokulammal (assessee) who was more than 80 years died on

30.04.2013 and the legal heir Shri. S. Badri was impleaded. The Id. Authorised Representative submitted detailed explanations and the reasons with supporting judicial decisions to the facts of the case referred at page 3 by Id.CIT(A). The assessee sold inherited jewellery in the financial year 2008-2009 and the proceed in Lakshmi Vilas Bank, as the assessee was aged and senior citizen being uneducated was under mistaken belief that sale of personal assets are not taxable and omitted to include in the return and the assessee accepted income in assessment proceedings and filed letter on 21.11.2012. But the Commissioner of Income Tax (Appeals) observed at page 6 of his order and dismissed the appeal as under:-

*"As seen from the balance sheet filed by the assessee, the fixed deposits with Karur Vysya Bank and regarding deposits with Tamilnadu mercantile Bank and cash and bank balances with Indian Overseas Bank, Canara Bank, The Tamilnadu Mercantile Bank and Karur Vysya Banks were declared. The details for cash and bank balances clearly show the cash with different banks. Similarly, the details of deposits and interests with different banks were also declared. The interesting issue is even if the appellant was under the impression that the income derived on the sale of personal assets is not taxable, she should have disclosed the cash balances in the balance sheet filed along with the return. However, the cash balance with Lakshmi Vilas Bank was not disclosed in the return of income / balance sheet filed with the department. After putting forth the bank statement obtained from Lakshmi Vilas Bank by the*

*Assessing Officer, the appellant has accepted to offer the income to tax which cannot be attributed to the voluntary compliance of the appellant. It is a clear case of concealment of income and not furnishing the actual particulars in the return of income. The Assessing Officer in the penalty order has elaborately discussed the various issues and has also differentiated the judicial decisions relied on by the appellant. Considering the discussions made above, I confirm the penalty levied by the Assessing Officer. The grounds of appeal are dismissed”.*

Aggrieved by the order of Commissioner of Income Tax (Appeals), the assessee assailed an appeal before Tribunal.

**5.** Before us, the Id. Authorised Representative of assessee reiterated the submissions and explained the circumstances and the reasons agitated in the assessment, penalty and appellate proceedings. The Id. Authorised Representative of the legal heir further submitted that the assessee has inherited jewellery and the same was sold and deposited in the bank account but by mistake could not be reconciled and reflected in bank balance. The assessee was having sufficient balance in other bank accounts and credit worthiness was proved. The assessee has accepted the information of AIR in the assessment proceedings and offered voluntarily by letter dated 21.11.2012 cash deposits of ₹45,01,000/- in the Lakshmi Vilas Bank for taxation and paid income tax. The Explanations of the

assessee before Assessing Officer are duly supported with evidence of payments of tax challans and authenticated fact. The assessee has expired on 30.04.2013 and her legal heir was brought on record as per law. Considering the genuineness of the voluntary submissions, he prayed for deletion of penalty.

**6.** Contra, the Id. Departmental Representative relied on the findings of the lower authorities order and opposed the grounds.

**7.** We heard rival submissions, perused the material on record and judicial decisions cited. The Id. Authorised Representative expressed and emphasized on the grounds that the assessee has voluntarily accepted the income in the assessment proceedings and genuine explanations were provided for omitting to include in the balance sheet. The explanations are bonafide, considering the age of the assessee and sources of income declared in the income tax return. The assessee is a senior citizen and also deriving income from marriage hall, rental income and income from other sources and regularly filing income tax returns. The deposits in Lakshmi Vilas Bank pertains to sale of inheritanted jewellery, which assessee has treated as personal Asset and omitted to include in the return. The assessee filed letter voluntarily offering the income and payment of taxes. On perusal of orders of lower authorities, we found the

Assessing Officer has calculated tax liability in the income tax computation sheet and omitted to give credit to the tax paid of ₹15,00,000/- which was paid much before completion of assessment on 23.11.2011. The Id. Authorised Representative drew attention to the letter dated 22.11.2011 and explained that the assessee has offered income voluntarily in good faith to buy peace with the Income Tax Department and satisfied the bonafides. On payment of taxes with challan for the relevant assessment year on 23.09.2011 ₹5,00,000/-, 24.09.2011 ₹5,00,000/- and 22.11.2011 ₹5,00,000/-, aggregating to ₹15,00,000/-. The penalty proceedings cannot be always a gateway on accepting the addition and it is not automatic each an every circumstance has to be weighed with genuinely and bonafides. Considering the apparent facts, submissions on record, the findings of the lower authorities are entirely one way as the assessee has accepted the income after receipt of notice u/s.143(2) of the Act. But the Id. Assessing Officer relied only on AIR information and no independent investigation was considered before completion of assessments. The assessee has not contested disputed issue in the assessment proceedings. Considering the Senior Citizen age of the assessee and assessee died during the income tax proceedings and the legal heir was brought on record. The genuine facts that the assessee has paid the taxes before the completion of assessment

proceedings and not contested the assessment. Prime facie penalty proceedings are not automatic and every addition cannot be contested for levying the penalty and we draw support from the principles laid down in case of case of *CIT vs. Manjunatha Cotton and Ginning Factory, 359 ITR 565*, (Karnataka) where it was held that the penalty proceedings are not automatic and they are distinct. Considering the factual matrix, legal decisions and assessment records, we set aside the order of Commissioner of Income Tax (Appeals) and direct the Assessing Officer to delete the penalty.

8. In the result, the appeal of the assessee in ITA No.2607/Mds/2014 is allowed.

Order pronounced on Tuesday, the 24th day of May, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

**(CHANDRA POOJARI)**

**लेखा सदस्य /ACCOUNTANT MEMBER**

Sd/-

(जी. पवन कुमार)

**(G. PAVAN KUMAR)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 24.05.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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