

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

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

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिकसदस्यकेसमक्ष

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

आयकर अपील सं./I.T.A. No.1841/Mds/2013

निर्धारण वर्ष /Assessment year : 2009-2010

Shri. R. Vijayasekharan,
104, TK Market,
Coimbatore 641 001.

Vs. The Assistant Commissioner
of Income Tax,
Circle III,
Coimbatore 641 018.

[PAN ABRPV 7468H]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri. S. Sridhar, Advocate
: Shri. R. Duraipandian, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 21-01-2016

घोषणा की तारीख /Date of Pronouncement

: 24-03-2016

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 Appeal NO.48/12-13, dt 23.08.2013 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 the following grounds:-

'1. The order of the Honourable Commissioner of Income Tax Appeal is unjustified in confirming the order of the Asst. Commissioner of Income Tax.

2. At the time of survey no documents or papers were seized but the assessee has agreed to offer additional income of ₹10,00,000/- to nuy peace with the Department.

3. The assessee has offered whatever he had agreed at the time of survey in Advaith Realty and Sri Vari Traders. But in his individual capacity the income was omitted to be offered which was a genuine mistake and not deliberate. The assessee has voluntarily at the time of assessment proceedings paid the taxes due on the additional income of ₹10,00,000/- and revised computation was filed alongwith the challan for payment of tax".

3. The Brief facts of the case, the assessee is an individual and in the business of jewellery and filed Return of income on 23.09.2010 disclosing total income of ₹5,34,671/-. The case was selected for scrutiny and sources being income from business, income from other sources and Agricultural income. There was survey u/sec.133 of the Act in the business premises of the assessee on 30.07.2009 and statements were recorded. The Id. Authorised Representative of the assessee appeared and filed explanations and submitted details of agricultural income alongwith proof of ownership with Chitta/Adangal and crops cultivated. The Id. Assessing Officer verified the documentary evidences and deductions claimed under Chapter VIA.

The assessee in the survey operations to buy peace with the department has voluntarily offered income of ₹10,00,000/- as per sworn statement recorded on 30.07.2009. But at the time of filing return of income it was not included for taxation. In the assessment proceedings, the assessee filed revised computation sheet by letter dated 25.11.2011 offering as income from other sources the Assessing Officer considered the revised statement and added ₹10,00,000/- to the returned income and assessed total income of ₹15,34,671/-. Subsequently, the Assessing Officer issued penalty notice and in compliance, the assessee filed written submissions on 04.06.2012 explaining that the assessee gave sworn statement in different capacities one as Managing Director of Advaith Reality Pvt. Ltd and as partner of Shri. Vari Traders and individual capacity. The assessee offered ₹10,00,000/- to tax as additional income based on certain loose sheets with good faith to avoid litigation and buy peace with the department. But the Assessing Officer relied on submissions of the information and assessment records and sworn statement of the assessee at question no.5 were assessee admitted that he has earned ₹10,00,000/- and offered to tax. Further, the Id. Assessing Officer alleged that but for survey, the assessee admitted unaccounted income from business in Revised statement as return of income filed without the disclosure. The assessee applied on

02.11.2011 for copy of sworn statement recorded in survey operation and admitted ₹10,00,000/- to tax. The Id. Assessing Officer relied on the decision of jurisdictional High Court in the case of *M. Sajjanraj Nahar vs. CIT 155 Taxman 536 (Mad)/283 ITR 230* and minimum penalty of ₹3,39,900/- u/s.271(1) (c) of the Act for furnishing inaccurate particulars and concealment of income to the extent of ₹10,00,000/-. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative substantiated arguments of assessment proceedings in survey operations the assessee has deposed sworn statements as (i) Partner of Sri Vari Traders (ii) Director of Advait Reality P. Ltd (3) Proprietor. The assessee agreed to offer additional income in partnership firm and company but offered ₹10,00,000/- in his individual income status. The Id. Commissioner of Income Tax (Appeals) on perusal of the assessment records and grounds raised by the assessee found that in order to buy peace and good faith has paid the taxes and not contested the quantum appeal. The Id. Authorised Representative argued that at the time of survey no document or papers were seized and assessee offered additional income but on verification of facts from records there were slips and loose sheets

found with reference to gold purchases and jewellery business and income from jewellery. The assessee when questioned in survey operation has offered ₹10,00,000/- as income from jewellery business and such transaction made outside books of accounts. The Commissioner of Income Tax (Appeals) confirmed the penalty order with these observations. Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee assailed an appeal before Tribunal.

5. Before us, the Id. Authorised Representative reiterated submissions made before the Assessing Officer and Commissioner of Income Tax (Appeals) and substantiated the grounds with arguments that the assessee in survey operations u/sec.133A of the Act has voluntarily offered income for taxation and agreed to pay income tax on additional income. The assessee is a partner, Director of Private Limited Company and also running business in individual capacity. The survey took place at business premises and the Department has recorded sworn statements. The assessee offered to pay tax on additional income in company and partnership firm and offered ₹10,00,000/- as income in individual capacity in jewellery business. The Department has considered the additional income and levied tax in the assessment order. The assessee in order to buy peace with the Department paid taxes on additional income and produced challan in

the penalty proceedings. The Id. Authorised Representative explained circumstances and the vital role of assessee as partner, director and proprietor and co-operated in the assessment proceeding and substantiated his bonafides on payment of taxes. Further Department has not found documents or paper during survey but in order to avoid litigation accepted the additional income and prayed for deletion of penalty.

6. Contra, the Id. Departmental Representative relied on the orders of the lower authorities judicial decisions. The Id. Departmental Representative also filed paper book containing copy of documents, impounded in survey and sworn statement and vehemently argued that the assessee has concealed the factual aspects of earning income and prayed for dismissal of appeal.

7. We heard the rival submissions and perused the material on record and judicial decisions cited. The Id. Authorised Representative explained the circumstances of offering of income by the assessee in the survey operations. The assessee accepted ₹10,00,000/- as additional income but failed to include in the return of income filed on 23.09.2010 but subsequently in the assessment proceedings filed a revised statement after obtaining the certified copy of sworn statement on 02.11.2011 in order to buy peace with the Department,

the assessee has not contested the addition or filed an appeal but paid taxes to substantiate the co-operation extended with the Department. The role of the assessee at the time of survey were sworn statements were recorded as capacity of Director, Partner of Shri Vari Traders and Proprietor of the jewellery business and assessee offered additional income of ₹10,00,000/- from jewellery business. The Id. Departmental Representative submitted paper book with seized documents and drew attention to the copies of incriminating material and impounded during the survey, relating to jewellery business. The statements recorded in regional language with translation copy on various question in survey operations. On perusal of material evidence filed by Revenue for the first time before us, we found the evidential value of documents seized pertaining to jewellery business alongwith scribbling of the assessee, prime facie could not explain whether it pertains to company/partnership or individual. Considering the apparent facts and circumstances we are of the opinion that documents filed were never put to test related to the assessee proprietor business and considering the principles of natural justice, the benefit of examination has to be provided to both the parties. Therefore, we find it appropriate to set aside the order of Commissioner of Income Tax (Appeals) and remit the entire issue in dispute to the file of the Commissioner of Income Tax (Appeals) who

shall examine the evidence filed and the assessee shall be provided with adequate opportunity of hearing before passing the order.

8. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced on Thursday, the 24th day of March, 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:24.03.2016

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 |