

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.867, 868, 869, 870, 871 & 872/Mds/2014

निर्धारण वर्ष / Assessment Years : 1998-99 to 2003-04

Shri Durga Das Vyas,
Narottam Agencies,
13, Errabalu Street,
Chennai - 600 001.

v. The Income Tax Officer,
Range IX(3),
Chennai.

PAN : ADAPV 2591 C
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.873 & 874/Mds/2014

निर्धारण वर्ष / Assessment Years : 2001-02 & 2002-03

Shri D. Srinivas Vyas,
13, Errabalu Street,
Chennai - 600 001.

v. The Income Tax Officer,
Range IX(3),
Chennai.

PAN : ABVPV 4760 G
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by : Shri N.V. Balaji, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri R. Durai Pandian, JCIT

सुनवाई की तारीख/Date of Hearing : 20.02.2017

घोषणा की तारीख/Date of Pronouncement : 23.03.2017

आदेश / O R D E R

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

These appeals filed by two different assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals) confirming the penalty levied by the Assessing Officer under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). Since common issue arises for consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

2. In all these appeals, the assessees have raised additional ground of appeal. In the additional grounds, the main intention of the assessees is that while issuing notice for levy of penalty under Section 271(1)(c) of the Act, the Assessing Officer did not specify whether the penalty proceedings were initiated for concealment of particulars of income or for furnishing inaccurate particulars of income.

3. Shri N.V. Balaji, the Ld.counsel for the assessees, submitted that since the Assessing Officer has not specified the exact reason for levy of penalty in the show cause notice, the penalty under Section 271(1)(c) of the Act is not justified. The Ld.counsel further

submitted that the assessments were made in the hands of the present assesseees on protective basis. The substantial assessments were made in the hands of other person. Therefore, when the assessments were made on protective basis, according to the Ld. counsel, penalty cannot be levied under Section 271(1)(c) of the Act. The Ld.counsel placed his reliance on the judgment of Calcutta High Court in CIT v. Super Steel (Sales) Co. (1989) 178 ITR 451 and on the judgment of Gauhati High Court in Metal Stores v. CIT 91990) 186 ITR 612. The Ld.counsel has also placed his reliance on the judgment of Punjab & Haryana High Court in CIT v. Behari Lal Pyare Lal (1983) 141 ITR 32.

4. Shri N.V. Balaji, the Ld.counsel for the assesseees, further submitted that for all the assessment years, except assessment for assessment year 2001-02, the assessments were completed on 06.03.2006 in the case of the assessee-Shri Durga Das Vyas and on 30.12.2008 in the case of the assessee-Shri D. Srinivas Vyas. For the assessment year 2001-02, the assessment was completed on 31.03.2004 in the case of Shri Durga Das Vyas. The penalty proceedings were initiated in respect of all the assessment years. The CIT(Appeals) passed the orders on 29.05.2009 and on 31.03.2009 in the case of Shri Durga Das Vyas and Shri D. Srinivas

Vyas respectively. The Assessing Officer passed the consequential order on 30.06.2009 and on 16.06.2009 in the case of the assesseees respectively. The ITAT disposed the appeal by order dated 14.11.2011 in both the cases. Referring to Section 275 of the Act, the Ld.counsel submitted that the Assessing Officer was expected to pass order within six months from the end of the month in which the order of this Tribunal was received by the CIT or Pr. CIT as the case may be. In this case, the penalty order was passed only on 29.06.2012 in both the cases, which is beyond the period of six months. According to the Ld. counsel, the order ought to have been passed on or before 31.03.2011 for all the assessment years. Therefore, according to the Ld. counsel, the penalty order passed by the Assessing Officer is barred by limitation.

5. On the contrary, Shri R. Durai Pandian, the Ld. Departmental Representative, submitted that while passing the assessment order on the basis of material found during the course of search operation, the Assessing Officer concluded that neither the assesseees nor their sub-contractor done any service to their principal. Therefore, the payment made by the principal to the assesseees and in turn, the payment made by the assesseees to the sub-contractor is not for business purpose. Therefore, according to

the Ld. D.R., the assesseees not only furnished inaccurate particulars of their income by claiming the payment made to the sub-contractor as expenditure, but also concealed income of the assesseees. Therefore, the Assessing Officer has rightly levied the penalty.

6. Referring to the additional ground raised by the assesseees regarding limitation, the Ld. D.R. submitted that the penalty order was passed for all the assessment years on 29.06.2012. Referring to proviso to Section 271(1)(a) of the Act, the Ld. D.R. submitted that when the CIT(Appeals) disposed of the appeals after 01.06.2003, penalty can be imposed before expiry of financial year in which proceeding in the course of such imposition of penalty was initiated or within one year from the financial year in which the order of the CIT(Appeals) was received by the Commissioner or Principal Commissioner as the case may be. In the case before us, the details of the receipt of the said orders of the CIT(Appeals) are not available on record, therefore, before deciding the issue on limitation, the date when the orders of the CIT(Appeals) were received by the Commissioner or Principal Commissioner needs to be verified. In the absence of any material available on record,

according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order passed by the Assessing Officer.

7. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, there was a survey in the premises of both the assessees on 29.12.2003. On the basis of information and material evidence found during the course of survey operation, the Assessing Officer concluded that the assessees have not rendered any service to the principal company and it was also found that the assessees have not made any payment to the sub-contractor. The CIT(Appeals) found that the assessees not only furnished the false information but also inflated the expenses to arrive at the total income. The CIT(Appeals) also found that the assessees willfully furnished inaccurate particulars because the transactions were knowingly for providing accommodative entries. The assessees now claims that the order passed by the Assessing Officer levying penalty under Section 271(1)(c) of the Act is barred by limitation. This issue was not raised before both the authorities below. For the first time, the assessees are raising before this Tribunal. Since the question of limitation goes to the root of the matter, the assessees can raise this issue before this Tribunal.

8. According to the Ld. counsel for the assesseees, the penalty proceeding was initiated in the course of assessment order. The CIT(Appeals) disposed of the appeal on 29.05.2009 and 31.03.2009 in the case of both the assesseees. The ITAT disposed of the appeals on 14.11.2011 and the penalty order was disposed on 29.06.2012 in all the cases.

9. We have carefully gone through the provisions of Section 275(1) of the Act which reads as under:-

BAR OF LIMITATION FOR IMPOSING PENALTIES

275 (1) No order imposing a penalty under this Chapter shall be passed--

(a) in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, whichever period expires later :

Provided that in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A, and the Commissioner (Appeals) passes the order on or after the 1st day of June, 2003 disposing of such appeal, an order

imposing penalty shall be passed before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or within one year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, whichever is later ;

(b) in a case, where the relevant assessment or other order is the subject-matter of revision under section 263 or section 264, after the expiry of six months from the end of the month in which such order of revision is passed ;

(c) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

10. For the purpose of deciding the issue of limitation, which was raised as additional ground for the first time before this Tribunal, this Tribunal needs to ascertain the exact date of the order of the CIT(Appeals) and order of this Tribunal served on the Commissioner or Principal Commissioner as the case may be. As rightly submitted by the Ld. Departmental Representative, these details are not available on record. Since the issue of limitation goes to very root of the matter, this Tribunal is of the considered opinion that the Assessing Officer has to reconsider the matter after ascertaining the exact date on which the orders of this Tribunal and

the orders of the CIT(Appeals) were served on the Commissioner or Principal Commissioner as the case may be.

11. Moreover, the assesseees have also raised an issue with regard to failure of the Assessing Officer to specify in the show cause notice whether he initiated penalty proceeding for concealing the particulars of income or for furnishing inaccurate particulars of such income. This Tribunal is of the considered opinion that the assesseees shall be given an opportunity to explain why penalty should not be levied before passing the order. Therefore, the Assessing Officer is incumbent upon to specify the reasons for initiating penalty proceeding. In other words, the Assessing Officer has to specify whether the penalty proceeding was initiated for furnishing inaccurate particulars of income or for concealing any part of such income.

12. Since the issue of limitation is remitted back to the file of the Assessing Officer, this Tribunal is of the considered opinion that this issue also needs to be considered by the Assessing Officer. Accordingly, the orders of the lower authorities are set aside for all the assessment years and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-

examine the matter afresh and bring on record the actual date on which the orders of the CIT(Appeals) and the orders of the Tribunal in the case of both the assessees, were served on the Commissioner or Principal Commissioner as the case may be. The Assessing Officer shall also bring on record the reasons for initiating penalty proceeding either for concealment of income or for providing inaccurate particulars of such income and also examine whether penalty can be levied when the assessments were made on protective basis, and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessees.

13. In the result, all the appeals of the assessees are allowed for statistical purposes.

Order pronounced on 23rd March, 2017 at Chennai.

sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd March, 2017.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-13, Chennai
4. Principal CIT-8, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.