

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos. 305 & 306/Mds/2014  
निर्धारण वर्ष / Assessment Years : 2006-07 & 2007-08

Shri A. Kalimuthu,  
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 Asstt. Commissioner of  
Income Tax,  
Central Circle II,  
Coimbatore

PAN: AKJPK4620P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri S. Sridhar, Advocate  
: Shri A. Srinivasan, JCIT

सुनवाई की तारीख/Date of Hearing

: 19.01.2017

घोषणा की तारीख/Date of Pronouncement

: 28.02.2017

**आदेश /O R D E R**

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

These appeals of the assessee are directed against the orders of the Commissioner of Income Tax (Appeals)-II, Coimbatore dated 27.07.2012 and pertains to the assessment years 2006-07 & 2007-08 confirming the penalties levied by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act').

2. There was a delay of 504 days in filing these appeals by the assessee. The assessee has filed a petition for condonation of delay. We have heard the Ld. counsel for the assessee and the Ld. Departmental Representative. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. Let us take ITA No.305/Mds/2014 for consideration. Shri S. Sridhar, the Ld. counsel for the assessee submitted that there was a search in the premises of the assessee under Section 132 of the Act. According to the Ld. counsel, the assessee is engaged in the business of real estate. The Ld. counsel further submitted that the assessee studied only up to elementary school level and he has no knowledge of the Income Tax Act. During the course of search operation, the assessee has accepted all the proposals of the department and paid the taxes also. Therefore levy of penalty of Rs.85,000/- is not justified. Referring to the order of the assessment, the Ld. counsel submitted that the assessee borrowed unsecured loans of Rs.2 lakhs from his friends and relatives. This was disclosed before the Revenue authorities. Merely because the assessee could not substantiate the source,

that cannot be a reason for levy of penalty. Similarly, due to negligence of the accountant, the assessee has offered additional income of Rs.66,540/-. The assessee has furnished all the details before the Revenue authorities. Therefore Explanation 5A to the Section 271(1)(c) of the Act is not applicable.

4. On the contrary, Shri A. Srinivasan, the Ld. Departmental Representative submitted that the claim of the assessee that he was illiterate and not aware of the provisions of the Income Tax Act cannot be an excuse for not disclosing the income earned by the assessee. In the case before us, according to the Ld. D.R., the Assessing Officer made an addition of Rs.2 lakhs towards unsecured loans. The assessee could not prove the genuineness of the loan. The Assessing Officer himself was fair enough in not levying penalty to the extent of Rs.91,352/- under Section 271(1)(c) of the Act. Therefore the CIT (Appeals) has rightly confirmed the penalty levied by the Assessing Officer to the extent of Rs.85,000/-.

5. We have considered the rival submissions on either side and perused the material available on record. The Assessing Officer levied penalty of Rs.85,000/- for addition of Rs.2,66,540/-. The

assessee claimed that he borrowed Rs.2 lakhs from his friends and relatives. This fact was disclosed to the Revenue. The assessee offered additional income of Rs.66,540/-. The addition made by the Assessing Officer is not on the basis of any material found during the course of search operation. The addition was on the basis of the admission made by the assessee. Even though, certain material was found during the search operation, no penalty was levied in respect of those items. Therefore, this Tribunal is of the considered opinion that invoking Explanation 5A to Section 271(1)(c) of the Act is not justified. The assessee claimed before the Assessing Officer that he borrowed a sum of Rs.2 lakhs from friends and relatives. The mere claim cannot be a reason for levy of penalty. It is for the Assessing Officer to examine further and find out that the claim made by the assessee is false one. In this case, no such examination was made. Merely because the assessee could not prove the genuineness of transactions and creditworthiness of the creditors, that cannot be a reason for levying penalty under Section 271(1)(c) of the Act. The Assessing Officer has to find out whether the assessee has concealed any part of his income or furnished any inaccurate particulars. In the absence of any such examination, this Tribunal is of the considerate opinion

that there cannot be any penalty under Section 271(1)(c) of the Act. Moreover, the additional income offered by the assessee to the extent of Rs.66,540/- was due to the negligence of the accountant. This fact was not found to be false. By taking in to consideration of the totality of the circumstances, this Tribunal is of the considered opinion that the levy of penalty of Rs.85,000/- is not justified. Accordingly, the orders of the lower authorities are set aside and the penalty levied by the Assessing Officer is deleted.

6. Now coming to ITA No.306/Mds/2014, the Assessing Officer levied penalty of Rs.3,55,132/-.

7. Shri S. Sridhar, the Ld. counsel for the assessee submitted that the assessee offered an additional income of Rs.11,80,224/- during the course of search operation. The purchase of Rs.50,000/- was also omitted by the accountant in the books of account. Mere addition in the absence of any search material, according to the Ld. counsel cannot be a reason for levy of penalty. The assessee has paid the taxes. Therefore levying penalty under Section 271(1)(c) of the Act is not justified.

8. On the contrary, Shri A. Srinivasan, the Ld. Departmental Representative submitted that during the year under consideration, the assessee has purchased a vacant land for Rs.50,000/- on 15.11.2006. This purchase was not accounted in the books of account. The assessee agreed that the cost of vacant land was Rs.50,000/- which was not accounted. Therefore, an addition of Rs.50,000/- was made under Section 69 of the Act. The Ld. D.R., further submitted that the assessee has also offered Rs.11,30,224/- as additional income for the year under consideration. In the absence of any explanation for earning this Rs.11,30,224/-, the Assessing Officer found that the assessee has concealed the income. Therefore, the penalty levied by the Assessing Officer was rightly confirmed by the CIT (Appeals).

9. We have considered the rival submissions on either side and perused the material available on record. Admittedly, the assessee offered an additional income of Rs.11,30,224/- and the cost of purchase of vacant land Rs.50,000/- was not accounted in the books of account which was also taken as income of the assessee. There was a search in the premises of the assessee on 12.02.2008 and the addition made by the Assessing Officer was not in relation

to any material found during the course of search operation. The addition was made on the basis of the admission made by the assessee. This Tribunal is of the considered opinion that there is no material to establish that the assessee has concealed any part of the income or furnished any inaccurate particulars of such income. Unless and until it is brought on record that the assessee has furnished any inaccurate particulars or concealed any part of his income, this Tribunal is of the considered opinion that levy of penalty under Section 271(1)(c) of the Act is not justified. It is a well settled principles of law that assessment proceeding is different and distinguished from penalty proceeding. The Assessing Officer is expected to re-appreciate the material available on record while considering the levy of penalty. Merely because there was an addition in the assessment proceeding that will not be a reason for levying penalty under Section 271(1)(c) of the Act. In other words, addition made by the Assessing Officer in the assessment proceeding will not automatically result in levy penalty under Section 271(1)(c) of the Act. In the case before us, the Revenue could not establish that the assessee has concealed any part of his income or furnished any inaccurate particulars. Moreover invoking Explanation 5A of Section 271(1)(c) of the Act in the facts and

circumstances of this case is not justified. Considering the totality of the facts and circumstances, this Tribunal is of the considered opinion that levy of penalty under Section 271(1)(c) of the Act to the extent of Rs.3,55,132/- is not called for. Accordingly, the orders of the lower authorities are set aside and the penalty levied by the Assessing Officer is deleted.

10. In the result all the appeals of the assessee are allowed.

Order pronounced on 28<sup>th</sup> February, 2017 at Chennai.

Sd/-

(अब्राहम पी.जॉर्ज)

(Abraham P. George)

लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 28<sup>th</sup> February, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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