

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1428/Mds/2015

निर्धारण वर्ष / Assessment Year : 2009-10

Shri V.S. Madasamy,
C/o Shri S. Sridhar, Advocate,
New No.14, Old No.82,
Flat No.5, 1st Avenue, Indira Nagar,
Adyar, Chennai - 600 020.

v. The Income Tax Officer,
Ward I(2),
Villipuram.

PAN : AADPM 1729 K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

प्रत्यर्थी की ओर से/Respondent by : Shri G. Johnson, JCIT

सुनवाई की तारीख/Date of Hearing : 30.05.2016

घोषणा की तारीख/Date of Pronouncement : 09.06.2016

आदेश /O R D E R

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Puducherry, dated 30.01.2015 for the assessment year 2009-10, confirming the penalty levied by the Assessing Officer under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the Assessing Officer levied penalty under Section 271(1)(c) of the Act in respect of the excess expenditure incurred by the assessee in purchase of paddy. Ld.counsel submitted that when the issue of quantum addition made by the Assessing Officer came before this Tribunal in I.T.A. No.815/Mds/2013, this Tribunal by an order dated 30.06.2015 remitted back the issue to the file of the Assessing Officer for reconsideration. Since the quantum addition made by the Assessing Officer was set aside and the matter was remitted back to the file of the Assessing Officer, according to the Ld. counsel, the penalty levied by the Assessing Officer at this stage may not survive.

3. On the contrary, Shri G. Johnson, the Ld. Departmental Representative, submitted that this Tribunal by an order dated 30.06.2015, remitted the matter back to the file of Assessing Officer for reconsideration in respect of the excess expenditure incurred by the assessee to the extent of ₹12,41,714/- in purchase of paddy. Since the quantum addition was set aside and the matter was remitted back to the file of the Assessing Officer for reconsideration,

the penalty proceeding may also be remitted back to the file of the Assessing Officer for reconsideration.

4. We have considered the submissions on either side and perused the relevant material available on record. Admittedly, the Assessing Officer levied penalty under Section 271(1)(c) of the Act in respect of the so-called excess expenditure said to be incurred by the assessee in purchase of paddy to the extent of ₹12,41,714/-. This Tribunal set aside the addition made by the Assessing Officer and remanded the issue back to his file for reconsideration, by order dated 30.06.2015. Therefore, as on today, the addition made by the Assessing Officer does not exist. Hence, the penalty levied by the Assessing Officer is not sustainable. Accordingly, the orders of the authorities below are set aside and penalty levied by the Assessing Officer under Section 271(1)(c) of the Act is deleted. It is open to the Assessing Officer to initiate the penalty proceeding under Section 271(1)(c) of the Act after completion of assessment as per the direction of this Tribunal in the order dated 30.06.2015.

5. With the above observation, the appeal filed by the assessee is allowed.

Order pronounced on 9th June, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 9th June, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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