

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1029/Mds/2016
निर्धारण वर्ष /Assessment Year: 2011-12

Smt. Hemalatha,
41, Giri Road, T. Nagar,
Chennai-600 017.

Vs. The Income Tax Officer,
Non-Corporate Ward-16(2),
Chennai-600 034.

[PAN: AAXPH 5291 F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.D. Anand, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr.B. Sahadevan, JCIT

सुनवाई की तारीख/Date of Hearing

: 05.01.2017

घोषणा की तारीख /Date of Pronouncement

: 31.01.2017

आदेश / O R D E R

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the Order dated 11.01.2016 of Commissioner of Income Tax (Appeals)-4, Chennai, in ITA No.85/2014-15/AY 2011-12/CIT(A)-4 for the AY 2011-12.

2.0 All the grounds of the appeal are related to the imposition of the penalty u/s.271(i)(c) for an amount of Rs.3,82,504/- for concealment of income. The assessee is a Director of M/s.International Maritime Academy, Chennai, and the owner of let out property i.e. No.41, 2nd Floor, Giri Road, T-Nagar, Chennai-17. For the AY 2011-12, the assessee admitted total income of Rs.18,93,600/- on 05.12.2011 and the assessment was completed on total income of Rs.25,03,520/- resulting an addition of Rs.12,38,005/- under the head income from property. During the assessment proceedings, the AO found that the assessee has entered into a rental agreement with M/s.International Maritime Academy, in which the assessee and her husband are the directors and let out the property belonging to the assessee for monthly rent of Rs.2.00 lakhs per month for the months of October to December, 2010 and Rs.4.00 lakhs per month from January to March, 2011, thereby, the rental income received/ accrued for the year ending 2011 was Rs.18.00 lakhs. Against the rental income of Rs.18.00 lakhs, the assessee had admitted Rs.6,61,800/- and claimed deduction u/s.24(a) a sum of Rs.1,98,540/- and interest on housing loan amounting to Rs.5,01,690/-. The net income admitted by the assessee under the head property Income was Rs.38,005/-. The AO verified the claim of interest of Rs.5,07,655/- and it was found that the loan was taken by Mr.Senthil Kumar spouse from 'City Financial' a consumer loan and not used for the purpose of construction of the house. Therefore, the AO disallowed the claim of interest u/s.24(a) and assessed the sum of Rs.18.00 lakhs under the head income from

property and the assessee had accepted the addition and the assessment became final. During the assessment proceedings, the AO initiated penalty u/s.271(1)(c) and imposed penalty u/s.271(1)(c). The assessee went on appeal before the Ld.CIT(A) and the Ld.CIT(A) confirmed the penalty holding that the assessee being a Director of the company to whom the property was let out was aware of the rents received or receivable and the assessee has not admitted the income voluntarily and the return was filed only subsequent to selection and scrutiny and detection by the Department.

3.0 Aggrieved by the order of the Ld.CIT(A), the assessee filed an appeal before this Tribunal.

During the appeal, the Ld.AR argued that the assessee is following the cash system of accounting and offered the receipts/rents on receipt basis for the year ending 31.03.2011. The assessee has received the rents of Rs.6,61,800/- only which was offered to the income. In the subsequent years, the assessee has admitted the arrears of rents which was taxed by the Department on receipt basis. The assessee has not gone on appeal, only with an intention to avoid litigation and filed Rectification Petition in the subsequent years for revising the rents offered on cash basis over and above the income accrued. Therefore, the assessee was under the bona fide belief that admission of income on cash basis is correct and as per law and there was no intention to conceal the

income. Accordingly, the Ld.AR submitted that since the assessee was under the bona fide belief that the rental income can be offered on cash basis, there is no case for penalty u/s.271(1)(C) and relied on the decision of Hon'ble Madras High Court in the CIT vs. Gem granites reported in 86 CCH 0160, Chennai, High Court. On the other hand, the Ld.DR argued that the assessee has admitted the rental income only after selecting the case by scrutiny and detection by the Department and there is no voluntary admission by the assessee. Therefore, the Ld.DR contended that it is a clear case of concealment of income and Hon'ble Supreme Court judgment in the case of MAK Data (P) Ltd. vs. CIT-II is squarely applicable and the penalty needs to be confirmed.

4.0 We heard the rival submissions and perused the material placed before us.

For the source of rental income, the assessee has followed the cash system of accounting and offered rent on receipt basis. The assessee also stated before the AO as well as the Ld.CIT(A) and in grounds of appeal that it has offered the rents on the basis of actual receipts in the subsequent years. Therefore, it is clear that the assessee has admitted the entire income on cash basis either in the AY under consideration or in the subsequent years on the basis of actual receipts which was not disputed by the AO. Further, no sooner the AO has raised the issue of the rents to be offered on accrual basis the assessee has admitted the rental income

as per the agreement on accrual basis without going for any litigation. Though, the rental income has to be admitted on accrual basis as per the annual value having admitted the entire rental income on actual receipt basis in the year under consideration and the subsequent years appears to be under bona fide belief that the rental income also can be admitted on the basis of actual receipts. Having admitted the entire rental income by the assessee on receipt basis, we are of the view that the contention of the assessee, that there was no intention to conceal the income has merit. We are of the considered opinion that the case of the assessee is squarely covered by the Hon'ble Jurisdiction High Court in the case law cited supra and we extract the relevant paragraphs of the judgment Hon'ble Jurisdiction High Court in Para No.10 as under:

'10. The Hon'ble Supreme Court in the case of Union of India vs. Rajasthan Spinning and Weaving Mills reported in (2009) 13 SCC 448, considered the earlier decision of the Hon'ble Supreme Court in the case of Union of India and Ors vs. Dharmendra Textiles Processors & Ors., reported in (2008) 306 ITR 277 (SC) and held that it goes without saying that for applicability of Section 271(1)(c) of the Act, condition stated therein must exist. The above said decision came up for consideration in the case of Commissioner of Income Tax vs Reliance Petroproducts Pvt., Ltd., reported in (2010) 322 ITR 158 (SC). On reading of Section 27(1) (C), the Hon'ble Supreme Court pointed out that in order to bring the case under Section 271(1) (c), there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision could not be invoked. Thus, the Hon'ble Supreme Court pointed out that a mere making of a claim, which is not sustainable in law, by itself, would not amount to furnishing of inaccurate particulars regarding the income of the assessee. The reading of the decision of the Hon'ble Supreme Court referred to above, thus points out that for sustaining penalty, the bona fide explanation of the assessee must be looked at, so that the contumacious conduct of the assessee for the purpose of sustaining the penalty would be taken as condition that is the main requirement under Section 271(1)(c) of the Act. Referring to the decision in the case of Dharmendra Textile Processors, (supra), the Hon'ble Supreme Court pointed out that in the background of Section 271(1)(c) of the Act, there is no necessity of mens rea being shown by the Revenue, however referring to the Explanation to Section 271(1)(c) penalty being a multiple liability, the bona fide of the conduct of the assessee necessarily assumes significant, even though willfulness of the assessee may not be a criteria, the conduct is to be considered. Thus, a mere fact that the addition in this case has been sustained by this Court by itself would not lead to the automatic application to Section 271(1), the Tribunal went into the explanation offered by the assessee as regards the charging of a higher amount in the case of J.B.Exports. Although, the Tribunal rejected the explanation for the purpose of assessment of goods, it considered it as a good ground for cancellation of penalty, when the explanation on the differential amount was given by the assessee that the entries were made in the account and the Accountant had not made the correct entry.'

5.0 In view of the above, we hold that there is no case for imposing penalty u/s.271(1)(C) and set-aside the Order of lower authorities and cancel the penalty imposed u/s.271(1)(C).

6.0 In the result, the appeal of the assessee is **allowed**.

Order pronounced in the Open Court on 31st January, 2017, at Chennai.

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. GANESAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S.SUNDER SINGH)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 31st January, 2017.

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आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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