

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं
श्री वी. दुर्गा राव, न्यायिक सदस्य के समक्ष
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER &
SHRI V. DURGA RAO, JUDICIAL MEMBER
आयकर अपील सं./ **I.T.A. Nos.936, 937, 938, 939, 940, 941 & 942**
/Mds/2014
(निर्धारण वर्ष / Assessment Years : 2000-01, 2001-02, 2002-03, 2003-
04, 2004-05, 2005-06, 2006-07)

Shri. K. Sundararaj,
Old No.19, New No.45,
Giriappa Road,
T. Nagar,
Chennai 600 017.

The Asst. Commissioner of
Vs Income tax,
Central Circle –I (5),
Chennai 600 034

[PAN: AAYPS 9141A]

आयकर अपील सं./ **I.T.A. Nos. 954, 955/Mds/2014**
(निर्धारण वर्ष / Assessment Years : 2002-03 & 2004-05)

The Asst. Commissioner of
Income tax,
Central Circle –I (5),
Chennai 600 034

Shri. K. Sundararaj,
Vs Old No.19, New No.45,
Giriappa Road,
T. Nagar,
Chennai 600 017.

(अपीलार्थी/Appellant)

[PAN: AAYPS 9141A]

(प्रत्यर्थी/Respondent)

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

प्रत्यर्थी की ओर से / Respondent by : Shri. P. Radhakrishnan, IRS, JCIT.

सुनवाई की तारीख/Date of hearing : 26.05.2015.
घोषणा की तारीख /Date of Pronouncement : 09.07.2015.

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

These assessee's appeals in ITA Nos.936 to 942/Mds/2014 are directed against the common order of the Commissioner of Income Tax (Appeals)-II, dated 29.01.2014, for the above assessment years, wherein the Commissioner of Income Tax (Appeals) confirmed the levy of penalty u/s.271(1)(c) of the Act. The Revenue's appeals in ITA Nos.954 & 955/Mds/2014 are directed against common order of Commissioner of Income Tax (Appeals)-I, dated 28.02.2013, wherein the Commissioner of Income Tax (Appeals) deleted the penalty for the assessment years 2002-03 and 2004-05.

2. The facts relating to the assessee are that there was a search u/s.132 of the Act in the residential and business premises of the assessee on 21.09.2005 and notice u/s.153A was issued. The assessee filed his returns of income pursuant to search, admitted income in addition to undisclosed income, income from agricultural lands of 12.13 acres owned by him for agricultural purpose only. The

assessment was completed u/s.153 r.w.s. 143(3) of the Act by making the following additions:-

1. Agricultural income treated as undisclosed income.
2. Unexplained investment in bank/deposits in bank account.
3. Investment in Koilpatti land.
4. Income from House property.

Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) confirmed the additions made by the Assessing Officer. Against this, the assessee preferred an appeal before the Tribunal. The Tribunal vide its order dated 19.05.2010 in ITA No.384/Mds/2010 set aside the issue of agricultural income to the file of the Assessing Officer to re-determine agricultural income for the assessment years 2000-01 to 2006-07 based on the assessment order of assessment year 2007-2008. Accordingly vide order u/s.153 r.w.s. 143(3) r.w.s. 254 of the Act disallowed 20% of agricultural income and treated the same as income from other sources. The Assessing Officer disallowed rental income, unexplained investment in bank, investment in Koilpatti land. The details of assessed income are as follows:-

Assessment year	Assessed Income	Date of order
2000-01	₹4,73,745/-	30.12.2011
2001-02	₹88,37,613/-	30.12.2011
2002-03	₹14,23,179/-	30.12.2011
2003-04	₹7,43,957/-	30.12.2011

2004-05	₹29,32,209/-	30.12.2011
2005-06	₹5,02,416/-	30.12.2011
2006-07	₹25,23,964/-	30.12.2011
2007-08	₹10,01,016/-	30.12.2009

2.1 The Assessing Officer in the penalty order stated the returns of income were filed by the assessee only, on consequent to the search conducted at the assessee's premises on 21.09.2005 and on issue of notice u/s.153A and that but for the search, the assessee would not have offered any income. Hence, penalty proceedings u/s.271(1)(c) were initiated for concealment of income and penalty u/s.271(1)(c) were levied. The details of penalties levied are as

Assessment Year	Penalty amount levied	Date of penalty order
2000-01	₹47,281/-	30.03.2010
2001-02	₹68,303/-	01.07.2009
2001-02	₹27,77,737/-	23.06.2008
2002-03	₹67,448/-	30.03.2010
2003-04	₹6,57,200/-	19.06.2009
2004-05	₹2,78,965/-	19.06.2009
2005-06	₹4,83,541/-	30.03.2010
2006-07	₹6,53,121/-	30.03.2010

Against this, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

2.2 Against sustenance of penalty, the assessee is in appeal before us for the assessment years 2000-01, 2001-02, 2002-03, 2003-04,

2004-05, 2005-06 and 2006-07 and against deletion of penalty, the Revenue is in appeal before us for the assessment years 2002-03 & 2004-05.

3. We have heard both the sides and perused the material on record. We discuss the issue assessment year wise:-

ITA No.936/Mds/2014 for the assessment year 2000-2001.

4. Regarding levy of penalty in respect of treating income from agriculture as income from other sources. The Id. Authorised Representative for the assessee submitted that the Assessing Officer treated 20% of the total agricultural income as non agricultural income as there is no positive evidence to suggest that the assessee earned the same from any undisclosed source. Accordingly, the Authorised Representative for the assessee contended that penalty cannot be levied where the income is estimated. He relied on the judgment of Supreme Court in the case of *CIT vs. Reliance Petro Products 322 ITR 158*, wherein it was held that merely because the assessee claimed deduction of interest expenses it has not been accepted by the Revenue, penalty u/s.271(1)(c) of the Act is not attracted. Merely making of the claim is not sustainable in law, by itself will not amount

to furnishing inaccurate particulars regarding income of the assessee. He also relied in the case of *CIT vs. Cafco Syndicate Shipping Company*, 294 ITR 134, wherein expenses having been recorded in assessee's book, failure to produce supporting voucher by itself would not constitute concealment attracting penalty u/s.271(1) (c) of the Act. Further, he also relied in the case of *CIT vs. Chennupati Tyres & Rubber Product 90 CCH 191 (APHC)* wherein it was held that when there was no intention on the part of the assessee to conceal the income and the assessee had agreed to offer sundry credit which were carried forward from previous year as income, as a measure of purchasing peace, imposition of penalty u/s.271(1)(c) of the Act was unjustified. He further relied on the judgment of jurisdictional High Court in the case of *CIT vs. M/s. Gem Granites (Kar), Chennai in T.C (Appeal) No.504/2009, dated 12.11.2013.*

4.1. On the other hand, the Departmental Representative submitted that the assessee was not able to prove the income declared by him as agricultural income. The assessee failed to establish the entire amount earned from the agriculture operation carried by the assessee, being so, the Assessing Officer made reasonable disallowance of 20% agricultural income as non agricultural income and levied penalty.

According to the Departmental Representative, the assessee is duty bound to maintain and produce evidence that were called by the Assessing Officer to prove that the income shown as agricultural income was in fact derived from agricultural operation. He further submitted that the claim of the assessee is not genuine and the penalty was rightly levied by the Assessing Officer which was confirmed by the Commissioner of Income Tax (Appeals). He relied on the following judgments

- (1) CIT vs. Ramanujam Thampi, 233 ITR 521 (Ker)
- (2) A.M. Shah & Co vs. CIT 108 Taxman 137 (Guj)
- (3) CIT vs. HCIL Kalindee Arsspl 37 Taxman.com 347 (Del)
- (4) Sharma Alloys (India) Ltd. vs ITO 37 Taxmann.com 51 (Mad)

In this assessee case, there was a search u/s.153A of the Act and notice was issued on 28.08.2006. Consequent to this, the assessee filed return of income declaring total income at ₹4,04,370/- which included agricultural income of ₹1,84,550/-. While completing the assessment u/s.153A of the Act, the Assessing Officer considered the agricultural income of ₹1,84,550/- as non agricultural income as the assessee failed to furnish details with regard to extent of agricultural land, details of cultivation like documents in support of purchase of

seeds, fertilizers, pesticides and proof for sale of agricultural produce. However, the assessee furnished details of land, nature of crops without further details which provoked the Assessing Officer to treat the agricultural income declared by the assessee at ₹1,84,550/- as income from other sources. Consequent to this, the Assessing Officer levied penalty u/s.271(1)(c) of the Act. In this year, while levying penalty the Assessing Officer has not estimated the agricultural income, the Assessing Officer treated entire agricultural income declared as ₹1,84,550/- for levy of penalty u/s.271(1)(c) of the Act. The assessee was not able to produce any evidence in support of the agricultural income. Whenever the assessee claimed any income exempted from tax, the assessee is liable to place necessary evidence to show that income in fact is exempted from tax. In this case, the assessee though declared an amount of ₹1,84,550/- as agricultural income, after the Tribunal remitted the issue back to the file of the Assessing Officer to re-compute the agricultural income in the light of the assessment of assessee in the assessment year 2007-2008 and 2008-09 vide order dated 19.5.2010 in ITA No.384/Mds/2010, the Assessing Officer considered only 20% of ₹1,84,550/- as agricultural income which worked out to ₹36,910/- as income of assessee. Thus it means that the Assessing Officer was not sure what the exact income

of the assessee from agricultural income. In other words, the Assessing Officer has estimated the agricultural income. Now the question before us is when the income was estimated and assessment was completed u/s.153A consequent to search action, by treating the agricultural income disclosed by the assessee as non agricultural income which was made without any basis of tenable and acceptable evidence recovered during the course of search and which was not disclosed by Assessing Officer, whether penalty could have been levied. In our opinion, as there is no material to suggest any undisclosed income as such levy of penalty cannot be sustained on estimated basis. This is not normal assessment and assessment was made consequent to search action and that is also by estimating portion of the agricultural income as non agricultural income. Had it been undisclosed income based upon concrete evidence recovered from search action, then our opinion would have been different. In the present case, the estimation of portion of the agricultural income as non agricultural income, consequent to search cannot be reason to levy penalty u/s.271(1)(c) of the Act. Accordingly, we inclined to delete the penalty on this count treating part of agricultural income disclosed by the assessee as non agricultural income on estimation basis. In the result, the assessee's appeal in ITA No.936/Mds/2014 is allowed.

5. **ITA No. 937/Mds/2014, assessment year :2001-2002**

In this year, the assessee disclosed agricultural income at ₹1,94,600/-. The Assessing Officer treated 20% of 1,94,600/- i.e worked out at ₹38,920/- as non agricultural income, consequent to assessment u/s.153A r.w.s. 143(3) r.w.s 254 of the Act. As discussed in the earlier assessment year 2000-2001 in earlier para (supra), penalty cannot be levied. We delete the penalty for the assessment year 2001-2002 as discussed in para 4 and 4.1. In the result, the assessee's appeal in ITA No.937/Mds/2014 is allowed.

6 **ITA No.938/Mds/2014, assessment year :2002-03.**

The assessee declared agricultural income of ₹2,60,420/-. The Assessing Officer treated 20% of ₹2,60,420/- i.e. ₹52,084/- as non agricultural income, consequent to assessment u/s.153A r.w.s. 143(3) r.w.s 254 of the Act. As discussed in the earlier assessment year 2000-2001 in para 4 and 4.1(supra), penalty cannot be levied. We delete the penalty for the assessment year 2002-2003. In the result, the assessee's appeal in ITA No.938/Mds/2014 is allowed.

7. **ITA No.954/Mds/2013, assessment year 2002-03.**

This appeal by Revenue, the Assessing Officer made an addition

in respect of unexplained bank deposits of ₹9,60,000/- vide order dated 05.06.2008, and levied penalty of ₹2,67,396/-. During the course of search, it was found that the assessee has made deposits of above amount in the saving bank account no.1397 with Indian Overseas Bank, Santhome Branch, Chennai. The assessee was not able to explain the source of deposits. Hence it was treated as income of the assessee and levied penalty u/s.271(1) (c) of the Act. On appeal, the Commissioner of Income Tax (Appeals) deleted the penalty by placing reliance on the judgment of the Supreme Court in the case of *CIT vs. Suresh Chandra Mittal, 251 ITR 09*. Against this, the Revenue is in appeal before us.

7.1 We have heard both the parties and perused the material on record. Any amount deposited in bank account of the assessee, the assessee has to explain the source from which it was deposited. In the present case, the assessee is not able to explain the deposits. According to the assessee, the assessee is not educated and return subsequent to the search was filed by a Chartered Accountant who obviously has not made out a proper disclosure. The intention of the assessee was to make a proper disclosure, come out clean and pay the taxes. However, it was submitted that it was only the mistake of the

Chartered Accountant and not of the assessee in proper disclosure. Later the assessee accepted for the addition to purchase peace and to avoid prolonged litigation. In our opinion, this contention of the assessee is totally misconceived. It is the duty of the assessee to disclose truly and fully while filing the return of income. The assessee cannot shift his responsibility to its Chartered Accountant. Further the assessee stated it was ill advised by the Chartered Accountant without mentioning the name of the Chartered Accountant. It is not brought on record what advice was given by the Chartered Accountant on this issue. In our opinion, the assessee has concealed particulars of income and also not given any bonafide explanation for this. This case is squarely covered by the judgment of Supreme Court in the case of *Mak Data (Pvt) Ltd. vs. CIT 358 ITR 593*, wherein held that

“ the assessee had only stated that it had surrendered the additional sum of Rs. 40,74,000 to avoid litigation, buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the Income-tax Department. The statute did not recognize those types of defences under Explanation 1 to section 271(1)(c) of the Act. The surrender of income in this case was not voluntary in the sense that the offer of surrender was made in view of detection by the Assessing Officer in the search conducted in the sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it was clear that the assessee had no intention to declare its true income.

It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The Assessing Officer had recorded a categorical finding that he was satisfied that the assessee had concealed the true particulars of income and was liable for penalty proceedings under section 271 read with section 274 of the Act. There was no illegality in the Department initiating penalty proceedings''

Hence, we are inclined to reverse the order of the Commissioner of Income Tax (Appeals) and restore the order of the Assessing Officer in levy of penalty u/s.271(1)(c) of the Act.

7.2 In the result, the appeal of the Revenue in ITA No.954/Mds/2013 is allowed.

8. **ITA No.939/Mds/2014, assessment year: 2003-2004**

The assessee declared agricultural income of ₹.4,11,350/-. The Assessing Officer treated 20% of ₹4,11,350/- i.e. 82,270/- as non agricultural income, consequent to assessment u/s.153A r.w.s. 143(3) r.w.s 254 of the Act. As discussed in the earlier assessment year 2000-2001 in earlier para (supra), penalty cannot be levied. We delete the penalty for the assessment year 2003-2004. In the result, the assessee's appeal in ITA No.939/Mds/2014 is allowed.

9 **ITA No.940/Mds/2014, assessment year: 2004-05.**

In this year, the penalty was levied on the following additions:-

- 1) Unexplained bank deposits of ₹18,20,000/-.
- 2) Treating agricultural income as non agricultural income of ₹4,45,350/-
- 3) Unexplained cash deposits of ₹4,00,000/-
- 4) Regarding unexplained bank deposit of ₹18,20,000/-. Separate penalty order was passed vide order dated 05.06.2008 imposing a penalty of ₹5,92,794/-.

Later vide order dated 19.06.2009, the Assessing Officer considered items in (2) & (3) of above for levy of penalty u/s.271(1)(c) . In our opinion, levy of penalty was in respect of treating the agricultural income as non agricultural income which is only on estimation basis. Consequent to the Tribunal order for the assessment year 2007-08 and 2008-09 wherein the Assessing Officer considered only 20% of ₹4,45,350/- as agricultural income as discussed in the earlier para in the assessment year 2002-2003, the levy of penalty is deleted.

9.1 Regarding levy of penalty in respect of unexplained cash deposits, there was no discussion about this issue by the Commissioner of Income Tax (Appeals) in his order. Instead he discussed about levy of penalty in respect of unexplained bank deposits of ₹18,20,000/, which is not a subject matter before him, as it was not considered by the Assessing Officer in his penalty order dated

19.06.2009. Accordingly, we direct the Commissioner of Income Tax (Appeals) to give his findings in levy of penalty in respect of unexplained cash deposits of ₹4,00,000/-. This appeal of the assessee in ITA No.940/Mds/2014 for the assessment year 2004-2005 is partly allowed for statistical purposes.

10 ITA No.955/Mds/2013, assessment year: 2004-05

This appeal by Revenue. In this case penalty was levied for unexplained deposits of ₹18,20,000/-. The facts are similar as in the assessment year 2002-2003. Accordingly, levy of penalty u/s.271(1)(c) was confirmed as discussed in ITA No.954/Mds/2013 in earlier para for the assessment year 2002-03.

10.1 In the result, the appeal of the Revenue in ITA No.955/Mds/2013 is allowed.

11 ITA No.941/Mds/2014, assessment year 2005-2006.

In the assessment year 2005-2006, the Assessing Officer levied penalty in respect of the following discrepancies found during the course of assessment.

- (i) ₹4,45,350/- was treated as income from other sources instead of agricultural income has claimed by the assessee.

- (ii) Unexplained deposit in bank account of ₹9,65,000/-
- (iii) Deemed dividend of ₹10,00,000/-.

It is to be noted that penalty in respect of unexplained bank deposit was passed by the Assessing Officer in separate order dated 16.06.2008. Further, in penalty order dated 30.03.2010, he levied penalty in respect of other two items at ₹4,83,541/- as tax was evaded.

11.1 In respect of agricultural income, addition was reduced to 20% of ₹4,45,350/-, i.e ₹89,070/- which is only on estimation basis consequent to order of the Tribunal for the assessment year 2007-08 and 2008-2009 (cited supra). In our opinion, since these facts are similar to the one already considered in assessment year 2000-01 in para 4 and 4.1 of this order, accordingly levy of penalty on this ground is deleted.

11.2 Regarding levy of penalty for deemed dividend of ₹10,00,000/-, the assessee accepted the addition in the course of assessment proceedings and offered no explanation regarding these lapses. The only contention of the assessee's counsel is that this addition was voluntarily offered to buy peace and to avoid litigation and penalty cannot be levied. In our opinion, this cannot be a

bonafide explanation so as to go out of the rigours of penalty proceedings. As held by the Supreme Court in the case of *Mak Data Pvt. Ltd. vs. CIT (supra)*, that penalty is leviable. In our opinion, the assessee failed to substantiate non offering of ₹10,00,000/- as income which was received by the assessee from the company where the assessee is having substantial interest. Being so, in the absence of the explanation of the assessee, we are not in a position to delete the penalty. Accordingly, the levy of penalty on this issue is confirmed. In the result, the appeal of the assessee in ITA No.941/Mds/2014 is partly allowed.

12. **ITA No.942/Mds/2014, assessment year 2006-2007.**

In this assessment year, the Assessing Officer considered the following two items for levy of penalty u/s.271(1)(c) of the Act.

- (1) Income from agricultural income considered as income from other sources at ₹5,34,420/-
- (2) Deemed dividend of ₹13,66,000/-

Regarding agricultural income, it was sustained by the Assessing Officer only 20% of ₹5,34,420/- in view of the Tribunal order for the assessment years 2007-08 and 2008-09 as discussed in the earlier para (supra). In our opinion, since these facts are similar to the one

already considered in assessment year 2000-01 in para 4 and 4.1 of this order, accordingly levy of penalty on this ground is deleted.

13. Regarding levy of penalty for deemed dividend of ₹13,66,000/- is confirmed as discussed in the assessment year 2005-06 in ITA No.941/Mds/2014. In the result, the appeal of the assessee in ITA No.942/Mds/2014 is partly allowed.

14. In the result, the appeals of the assessee in ITA No.936, 937, 938, 939/Mds/2014 are allowed and ITA Nos.940, 941, 942/Mds/2014 are partly allowed and the Revenue's appeals in ITA Nos.954 & 955 /Mds/2014 are allowed .

Order pronounced on Thursday, the 9th day of July, 2015, at Chennai.

Sd/-
(वी. दुर्गा राव)
V. DURGA RAO

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)

लेखा सदस्य/ ACCOUNTANT MEMBER

चेन्नई/Chennai.

दिनांक/Dated:09.07.2015.

KV

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.

