

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष
**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

अपील सं./I.T.A.No.02/Mds/2016

निर्धारण वर्ष /Assessment Year : 2009-10

Assistant Commissioner of Income
Tax,
Corporate Circle -IV(2),
Chennai.

Vs. Smt. Hemalatha Rajan,
AJ-25, Old No. AJ-54,
Shanthi Colony,
4th Street, 9th Main Road,
Anna Nagar,
Chennai - 600 040.

[PAN: AATPH 2012G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by :

Shri Shiva Srinivas

प्रत्यर्थी की ओर से/Respondent by :

Shri Saroj Kumar Pardia, Advocate

सुनवाई की तारीख/Date of Hearing

: 15.09.2016

घोषणा की तारीख/Date of Pronouncement

: 30.11.2016

आदेश /O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The Revenue has filed an appeal against the order of Commissioner of Income Tax (Appeals) - 8, I.T.A. No. 60/2013-14 dated 19.10.2015 passed under section 271(1)(c) and 250 of the Income Tax Act and the Revenue has raised the

grounds that the Ld. CIT(A) as erred in deleting the penalty levied in 271(1)(c) irrespective of the fact that the assessee has concealed the income and also submitted inaccurate particulars and also the success sharing bonus received by the assessee is treated as revenue receipt in the hands of the assessee and also overlooked the judicial decisions.

2. The Brief facts of the case are that the assessee is a Director of M/s. Mafol Management Consultancy Ltd., having headquarters at Chennai and out of country in Europe, US, Middle East, South and Southeast Asia and filed the Return of Income on 31.03.2010 with the total income of Rs. 1,93,13,945/- and the return of income was processed u/s. 143(1) of the Act and subsequently notices under 143(2) and 142(1) were issued. The Ld. AR of the assessee appeared from time to time and filed the details. On perusal of the statement of Bank accounts the Assessing Officer found that the amount of Rs. 2,67,60,000/- was credited and on questioning the assessee has submitted that the payments are received from Randstad Holding NV as unconditional payment upon signing of agreement to withdraw the legal proceedings against Randstad NV by the assessee and surrender rights as per the original agreement with the company. The main issue being the assessee as claimed its capital receipt and claimed as tax free. The Assessing Officer dealt on factual aspects of assessee's transactions at page 2 to 4 of his order and also considered the detailed submissions of the assessee. The main dispute arised in the assessment proceedings that the assessee claimed the foreign payment as the compensation for cancellation of a contract and is a capital receipt. Whereas the

Assessing Officer relied on the judicial decisions treated the receipt as the revenue receipt u/s. 28(v)(a) of the Act and passed order u/s. 143(3) dated 27.12.2011.

3. Aggrieved by the order, the assessee filed an appeal with the CIT(A) and the Ld. CIT(A) has treated the receipt under income from other sources u/s. 56 of the Act and on further appeal by the assessee the Tribunal confirmed that the success sharing bonus is a revenue receipt and passed order under ITA No. 1776/Mds/2012 and 1777/Mds/2012 dated 30.12.2012 and Aggrieved by the Tribunal order, Assessee filed an appeal before the Hon'ble High Court of Madras and the appeal was admitted vide Tax Case Appeal No. 92/2013 and also granted the interim stay of recovery of tax arrears. Subsequently, the Assessing Officer initiated penalty proceedings and issued notice. In the penalty proceedings, the Ld. AR of the assessee reiterated the submissions of assessment proceedings and discussed on the nature of the receipt being success sharing bonus due to managerial abilities for running the company and cannot be treated as revenue receipt. The Ld. AO relied on the jurisdictional High Court decision and was of the opinion that the assessee has concealed the income particulars of success sharing bonus and levied penalty of Rs. 89,84,690/- vide order u/s. 271(1)(c) dated 30.07.2013.

4. Aggrieved, assessee filed appeal with CIT(A), the Ld. CIT(A) considered the facts and the grounds argued by the Ld. AR and found that the assessee has received an amount of 1 million Euros for forgoing the right to sue and initiate legal proceedings for breach of pre-emptive right to purchase shares held by M/s. Vedior

Asia in M/s Ma Foi Management consultants Ltd., The assessee is the director and assessee's husband K. Pandiarajan is the Managing director. The Ld. CIT(A) found that the quantum appeal of the assessee was admitted by the jurisdictional High Court vide Tax Case Appeal No. 92/2013 and issue debatable and relied on the decisions of the Hon'ble Supreme Court in CIT Vs. Reliance Petroproducts Ltd., 322 ITR 158 (SC) and Smt. Ramila Ratilal Shah Vs. ACIT 60 TTJ 171 (Ahmedabad) Nayan Builders & Developers Pvt. Ltd. Vs ITO (Mumbai) and further relied on the co-ordinate bench decision in the case of assessee's husband Shri Pandiarajan ITA No. 54/Mds/2015 dated 12.06.2015 where the penalty issue was disputed and the Tribunal considered the facts and the judicial decisions and the issue is debatable and is not a fit case for levying penalty u/s. 271(1)(c) of the Act, the Ld. CIT(A) with these observations cancelled the penalty levied and allowed the assessee's appeal.

5. Aggrieved by the order of CIT(A), the Revenue has filed an appeal before the Tribunal. The Ld. DR argued the grounds and submitted that the CIT(A) has erred in deleting the penalty levied u/s. 271(1)(c) irrespective of the fact that the assessee has furnished inaccurate particulars and the assessee has treated this success sharing bonus as capital receipt but the Assessing Officer considered as Revenue income confirmed by the CIT(A) and Tribunal. The CIT(A) has not appreciated that the relinquishment of right emanating from the agreement cannot be capital receipt and relied on the judicial decisions and prayed for allowing the appeal. Contra, the Ld. AR of the assessee vehemently argued that the amount of Rs.2,67,60,000/-received as a success sharing bonus is debatable and there is no precedents to treat as Revenue Expenditure.

6. The Ld. AR further emphasized that against the order of the co-ordinate bench of this Tribunal in quantum addition, the Hon'ble High Court of Madras has admitted the Tax Case (Appeal) No. 93/2013 and since issue has not become final and relied on the decisions of Hero Honda Motors Ltd. 14 ITR (Tribunal)161 (Delhi), CIT Vs. Liquid Investment and Trading Co (Delhi), TTK Health Care ITA No. 2028/M/2011 dated 20.06.2013 Chennai, where penalty cannot be levied in case where quantum of law is admitted by the High Court and supported his arguments with the decision of High Court in the case of CIT Vs. Nayan Builders and Developers (P) Ltd 89 CCH 187(Mumbai)., where the admission of appeal by the High Court as enough evidence of the issue being debatable and levy of penalty does not arise and prayed for dismissing the Revenue appeal.

7. We heard the rival submissions and perused the material on record and judicial decisions. The main contention of the LD. DR that the CIT(A) has erred in deleting the penalty irrespective of the fact that the quantum was confirmed by the co-ordinate bench of Tribunal but subsequently judicial High Court has admitted the main issue. We found that the Assessing Officer in penalty proceedings relied mainly on the Assessment Order and is of the opinion that the assessee has disclosed inaccurate particulars while filing the Return of income. Further, we found the issue is not clear and debatable and the Hon'ble High Court of Madras in the Tax Appeal NO. T.C .No. 93/2013 has admitted the case. Considering the above facts and there is no lapse on the part of the assessee in filing the Return of income and the disputed issue of sharing success bonus is debatable to treat as capital or

revenue and co-ordinate bench of this Tribunal in the assessee's husband case penalty issue in ITA No. 54/Mds/2015 of Shri Pandia Rajan dated 12.06.2015 has deleted penalty by observing as follows:

"We heard both the parties on the issue of leviability of penalty on the facts of the present case. We find there is no dispute before us so far as disclosure of information in the return of income is concerned. Assessee furnished all relevant particulars relating to the impugned receipt. Whatever is relied upon by the Assessing Officer in the penalty proceedings, the same are emanated from the return of income furnished by the assessee in normal course. There is also dispute on the nature of the said receipt whether it is a capital or revenue receipt. While the ITAT upheld the revenue nature of the receipt, the Hon'ble High Court admitted the appeal of the assessee. Therefore, we find debatability on this issue. It is also undisputed fact that the Hon'ble High Court has admitted the appeal and the same is pending for final adjudication. Considering all these undisputed facts, we find no default in disclosure of information in the return of income by the assessee. Debatability is evident as narrated by the Id. Counsel for the assessee before us. On the other hand, the Revenue failed to prove the absence of debatability on the issue. Considering the overall factual matters of the case, we are of the opinion that it is not a fit case for levying penalty u/s. 271(1)(c) of the Act. Accordingly, the grounds raised by the Revenue are dismissed and the appeal of the Revenue is dismissed."

Considering the above facts, judicial decisions and complexity and debatability of the issue and decision of the co-ordinate bench of the Tribunal, we are of the opinion that the levy of penalty by the Assessing Officer is not in accordance with law and therefore, we are not inclined to interfere with the order of CIT(A) and upheld the same and dismiss the grounds of the appeal of the Revenue.

8. In the result, Revenue appeal is dismissed.

Order pronounced on Wednesday, the 30th day of November, 2016 at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 30th November, 2016

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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