

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

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

श्री अब्राहम पी जॉर्ज, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष

**BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER  
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

**अपील सं./ I.T.A. No. 985/Mds/2013**

**निर्धारण वर्ष / Assessment Year : 2008-09**

R. Rangarajan,  
No. 38, (Old No. 24)  
A.B.M. Avenue,  
R.A. Puram,  
Chennai - 600 028.

Vs. Assistant Commissioner of  
Income Tax,  
Circle -III(3),  
Chennai - 600 034

**[PAN: AADPR 7092J]**

**अपील सं./ I.T.A. No. 1304/Mds/2013**

**निर्धारण वर्ष / Assessment Year : 2008-09**

Deputy Commissioner of Income  
Tax,  
Central Circle - III (3),  
3rd Floor, Uthamar Gandhi Salai,  
Nungambakkam,  
Chennai - 600 034.

Vs. R. Rangarajan,  
No. 38, (Old No. 24)  
A.B.M. Avenue,  
R.A. Puram,  
Chennai - 600 028.

**[PAN: AADPR 7092J]**

**अपील सं./ I.T.A. No. 986/Mds/2013**

**निर्धारण वर्ष / Assessment Year : 2008-09**

Smt. R. Mahalakshmi,  
No. 38, (Old No.24),  
A.B.M. Avenue,  
R.A. Puram,  
Chennai - 600 028.

Vs. Assistant Commissioner of  
Income Tax,  
Circle -III(3),  
Chennai - 600 034.

**[PAN: AGQPM 8406N]**

**अपील सं./ I.T.A. No. 1305/Mds/2013**

**निर्धारण वर्ष / Assessment Year : 2008-09**

Deputy Commissioner of Income  
Tax,  
Central Circle - III (3),

Vs. Smt. R. Mahalakshmi,  
No. 38, (Old No.24),  
A.B.M. Avenue,

3rd Floor, Uthamar Gandhi Salai,  
Nungambakkam,  
Chennai - 600 034.

R.A. Puram,  
Chennai - 600 028.  
**[PAN: AGQPM 8406N]**

**(अपीलार्थी/Appellant)****(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से /Appellant by : Shri G. Baskar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Mr. Supriya Pal, JCIT

सुनवाई की तारीख/Date of Hearing : 22.09.2016

घोषणा की तारीख/Date of Pronouncement : 25.11.2016

**आदेश / O R D E R****PER G. PAVAN KUMAR, JUDICIAL MEMBER:**

These are the cross appeals filed by the assessee and Revenue against the orders of CIT(A) - II, Chennai in I.T.A. No. 34/2011-12/A-II dated 06.03.2013 for the assessment year 2008-09 in the case of Shri R. Rangarajan and I.T.A. No. 20/11-12/A-II dated 06.03.2013 of Smt. R. Mahalakshmi. Since, the issues in these appeals are common in nature, these appeal are clubbed and heard together and disposed by the common order. For the sake of convenience we first take up assessee's appeal ITA No. 985/Mds/2013.

2. The assessee has raised following grounds of appeal:

2.1 The CIT(A) went wrong in directing the Assessing Officer to levy penalty u/s. 271 AAA of the Income Tax Act on the undisclosed income.

2.2 The CIT(A) having found that the penalty levied u/s. 271(1)(c) is untenable, ought to have quashed the entire order impugned before him.

2.3 The CIT(A) having found that the penalty levied by the Assessing Officer u/s. 271(1)(c) is untenable, also went wrong in giving such a direction without giving any specific opportunity to the appellant on such direction.

2.4 The CIT(A) has no jurisdiction to levy penalty different from the one levied by the Assessing Officer and therefore such a direction given by him is liable to be struck down for want of jurisdiction.

2.5 In any event the CIT(A) ought to have notice that the provisions of section 271AAA on the sum of Rs. 1,52,19,000/- is not applicable to facts of the present case and as such even on merits, the order of the CIT(A) to the contrary is liable to be vacated.

3. The Brief facts of the case are the assessee is an individual and Chairman of M/s. Vel Tech Group of Educational Institutions and the notice u/s. 153A r.w.s 153C of the I.T Act served on the assessee to file Return of Income. In compliance to the notice, the assessee filed return of income on 29.10.2010 admitting total income of Rs. 1,62,96,560/- subsequently notice u/s. 143(2) of the Act along with questionnaire was served. In compliance to the above notice, Ld. AR of the assessee appeared from to time and filed the

details and explained that agricultural income of Rs. 12,75,000/- was received from M/s. Vel Horticulture Ltd., in cash but the Ld. AO found that such income is in nature of the disclosed income and made addition to Returned income and passed order u/s. 153A r.w.s. 143(3) of the Act determining Assessed income of Rs. 1,75,71,560/-. Subsequently, the Ld. AO has initiated penalty proceedings and issued notice. In compliance, the Ld. AR appeared and explained that the assessee has admitted the income and paid taxes and immuned from penalty provisions as per explanation 5 to section 271(1)(c) of the Act. The Ld. AO relied on the submissions and provisions of law observed that the assessee has filed the Return of income u/s. 153A of the Act admitting the total income of Rs. 1,62,96,560/- and due to search u/s. 132 of the Act, income has been unearthed. The Ld. AR explained that the disclosed income pertains to the said financial year and the difference in the total income was already furnished and covered by the Explanation 5 of 271(1)(c) of the Act. The Ld. AO found in the assessment order that assessee has various real estate transactions and Rs. 12,75,000/- was added as undisclosed income in the hands of assessee as there is no convincing explanations on agriculture income. Finally, the Ld. AO is of the opinion that the assessee has not disclosed the said information in Return of Income u/s. 139(1) of the Act but disclosed in Return of income filed in compliance to the notice u/s. 153A of the Act and the assessee could not produce any books of accounts or substantiate the claim and the income was offered under income from other

sources and levied the penalty of Rs. 48,35,016/- and passed order dated 27.06.2011.

4. Aggrieved by the order of penalty the assessee has filed an appeal with the CIT(A). In the appellant proceedings, the Ld. AR of the assessee argued that the Ld. AO erred in levying penalty as the assessee has offered Rs. 1,52,19,000/- in Return of income filed in compliance to notice u/s. 153A of the Act. The income includes on money payments made to the sellers and agricultural income which is not liable to tax and was disclosed voluntarily. The assessee in assessment proceedings accepted the income of Rs. 1,52,19,000/- to buy peace with the Income Tax Department and therefore there is no concealment of income and penalty cannot be levied. Further, the agricultural income is not taxable and exempted from Income tax and penalty cannot be levied on the agricultural income. The Ld. CIT(A) considered the arguments and findings of the Assessing Officer made in the Assessment Order and the penalty order. The Ld. AR explained in the penalty proceedings that the assessee has admitted additional income to purchase peace and avoid litigation and this amount was offered without any conditions. The Income Tax Department after the search has recorded statement on money payments made by the assessee which was already offered and the agricultural income is genuine source and is not taxable. Therefore, no penalty cannot be levied, the admission of income cannot be concealment of income and no impounded

material was found in respect of transaction of on money payments and relied on the jurisdictional High Court decision and Tribunal decisions. The Ld. AR further explained that the penalty can be levied on the order passed u/s. 153C of the Act and not u/s. 153A of the Act. The Ld. CIT(A) on perusal of the provisions found that the Assessing Officer has justified his action and there is reference on provisions of section 153C along with 153A in the assessment order and assessment order cannot be invalid and relied on the provisions of section 292B of the Act and rejected the objections of the assessee. Further, the Ld. CIT(A) perused the provisions of Levy of penalty and found that the assessee has disclosed total income of Rs. Rs. 33,83,635/- in the Return of income filed on 17.10.2008, whereas the Due date of filing Return of income is 31.07.2008. Subsequently, in compliance to the notice u/s. 153A Return of income was filed on 29.03.2010 with total income of Rs. 1,62,92,560/-. The Ld. CIT(A) found that there was search operations u/s. 132 of the Act of Vel Tech Group of Institutions on 26.08.2008 and the assessment being assessment year 2008-09 and the provisions of section 271AAA of the Act are attracted and not the provisions of section 271(1)(c) of the Act and due to mistake in stating the wrong section, the order cannot be said to be void and defect is curable u/s. 292B of the Act. Further, the Ld. CIT(A) is of the opinion that section 271AAA of the Act was introduced from 01.04.2007 applicable from Finance Act 2007 and as per the provisions where the search has been initiated u/s. 132 of the Act on or after 1st June 2007, the assessee shall be

liable to pay by way of penalty in addition to tax, if any payable by him as computed at the rate of 10% of undisclosed income of the specified previous year and dealt exhaustively on the provisions at page 5 and 6 of the order and conclude that the provisions of section 271AAA of the Act are applicable to the assessee. The Ld. CIT(A) found that the undisclosed income offered by the assessee and addition in the assessment proceedings are liable for penalty u/s. 271AAA of the Act and directed the Assessing Officer to levy penalty @ 10% of such undisclosed income of the assessee and partly allowed the appeal. Aggrieved the assessee has filed an appeal with the Tribunal.

5. Before us, the Ld. AR of the assessee argued that the CIT(A) erred in giving directions to the Assessing Officer for levy of penalty u/s. 271AAA of the Act on the undisclosed income. The Ld. CIT(A) having found that the penalty levied u/s. 271(1)(c) is not tenable should have vacated the entire penalty order and further erred in not providing specific opportunity to the appellant before giving directions to the Assessing Officer for levy of penalty and the provisions of section 271AAA of the Act are not applicable to the assessee and prayed for allowing the appeal on merits. Contra, the Ld. DR relied on the Assessing Officer order and opposed to the grounds.

6. We heard the rival submissions and perused the material on record and provisions of the Act. The Ld. AR argued that the assessee cannot be made liable to pay the penalty u/s. 271AAA of the Act. There was search u/s.

132 of the Act on 26.08.2008 and the Return of income was filed on 17.10.2008 disclosing the total income of Rs. 38,83,635/- and subsequently on receipt of notice u/s. 153A r.w.s. 153C of the Act the assessee filed the Return of Income on 29.10.2010 disclosing total income of Rs. 1,62,96,560/- and was considered by the Assessing Officer for the assessment purpose. The fact remains that the assessee has offered additional income and filed the Return of income to buy peace with the department and to avoid vexatious litigation and the Assessing Officer does not have any impugned document in support of undisclosed income. The Assessing Officer relied only on the statement of the assessee and the Return of income filed and levied penalty. The assessee has not retracted the statement on disclosure of income. The Ld. CIT(A) gave the directions to the Assessing Officer to levy penalty u/s. 271AAA of the Act as against provisions of section 271(1)(c) of the Act. We found that the statement is recorded by the Assessing Officer and the Ld. AO came to a unilateral conclusion that the search was initiated on assessee and because of such action income was disclosed by the assessee to the Income Tax Department. Prima facie due to search operations on M/s. Vel Tech Group of institutions the assessee was served with notice u/s. 153A of the Act and the assessee has filed Return of Income for the assessment year with disclosure of income as other income and which is not part of Regular Accounts and such income is liable for levy of penalty u/s. 271(1)(c) of the Act. We support our view on the decision of coordinate bench ITA No. 235 & 236 /Mds/2013 dated

30.04.2013 of Assistant Commissioner of Income Tax Vs. Smt J.Myhilli on applicability of provisions of levy of penalty. Now the question arises whether the order of the Ld. CIT(A) giving directions to the Assessing Officer to levy penalty u/s. 217AAA of the Act shall survive. We read the provisions of section 271AAA(1) of the Act as under:

- (a) *"The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that in a case where search has been initiated u/s. 132 on or after the 1st day of June, 2007 [but before the 1st day of July, 2012], the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum computed at the rate of ten percent of the undisclosed income of the specified previous year".*
- (b) *Specified previous year means the previous year-*
- (i) *Which has ended before the date of search, but the date of filing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the said date; or*
- (ii) *in which search was conducted."*

7. We perused the provisions and found that the directions of the CIT(A) to levy of penalty u/s. 271AAA cannot be sustained. On application of said provisions to the present case, the search u/s. 132 of the Act was conducted on 26.08.2008 and the due date of filing the Return of income of assessee is 31.07.2008 and the assessee has filed the Return of income on

17.10.2008, which is after the due date of Return of Income u/s. 139(1) of the Act and in compliance to the provisions of section 271AAA of the Act. The specified the previous year applicability for the year ended is 31.03.2008 and the present assessment year being assessment year 2008-09, and the due date u/s. 139(1) of the Act being 31.07.2008 and whereas search u/s. 132 of the Act took place on 26.08.2008 and the due date of filing Return of income u/s. 139(1) has already expired before the search. Hence, the penalty cannot be initiated. We considering the apparent facts, provisions of law and judicial decision are of the opinion that the Ld. CIT(A) does not have the power to give directions to levy penalty u/s. 271AAA on undisclosed income. Since, the orders of the Assessing Officer on penalty merged with the appellate authority, we are of the opinion that order of CIT(A) cannot be sustained and in the interest of justice, we dismiss the order of CIT(A) and allow the grounds of the assessee.

8. Now, we take up the Revenue appeal I.T.A. No. 1304/Mds/2013, since we have dismissed the order of CIT(A), the appeal filed by the Revenue become infructuous and dismissed.

9. Similarly, the assessee's appeal I.T.A. No. 986/Mds/2013 is allowed and Appeal No. I.T.A. No. 1305/Mds/2013 filed by the Revenue is dismissed.

10. In the result, the appeals of the assessee are allowed and the Revenue appeals are dismissed.

Order pronounced on Friday, the 25th day of November, 2016 at Chennai.

Sd/-

(अब्राहम पी जॉर्ज)

**(ABRAHAM P. GEORGE)**

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

**(G. PAVAN KUMAR)**

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 25<sup>th</sup> November, 2016

**JPV**

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