

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 89,90 & 91/Mds/2016

निर्धारण वर्ष /Assessment year : 2005-06, 2006-07 & 2007-2008

M/s. Harrington House,
No.37, IIIrd Main Road,
R.A. Puram,
Chennai 600 028.

Vs. The Assistant Commissioner of
Income tax,
Non Corporate Circle -1,
Chennai.

[PAN AADFH 0776K]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri. A.V. Sreekanth, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 10-02-2016

घोषणा की तारीख /Date of Pronouncement : 28-04-2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeals filed by the assessee are directed against common order of the Commissioner of Income-tax (Appeals)-2, Chennai in ITA No.2,3 & 4/2012-13, dated 28.10.2015 for the assessment years 2005-06, 2006-07 & 2007-08 passed u/s.271(1)(c)

and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act'). Since the issue in these three appeals is common in nature, hence these appeals are combined, heard together, and disposed of by a common order for the sake of convenience

2. The grounds of appeal raised by the assessee are under:-

"2.1 The Commissioner of the Income tax (Appeals) ought to have appreciated that the appellant had neither concealed nor furnished inaccurate particulars of income. Mere delay in filing return of income u/s. 139(1) cannot lead to concealment of income or filling of inaccurate particulars.

2.2 The Commissioner of the Income tax (Appeals) ought to have appreciated that the appellant had offered an explanation as to the circumstances under which the appellant filed its return of income belatedly and the explanation was not found to be false.

2.3 The Commissioner of the Income tax (Appeals) ought to have appreciated that the appellant had proved that its explanation and claim is bonafide and there is no deliberate intention to file return of income belatedly as the appellant has paid advance tax and most of balance tax before the receipt of the notice u/s.148.

2.4 The Commissioner of the Income tax (Appeals) tax erred in not properly appreciating the submissions made by the appellant. The Appellant relies on the decision of the Supreme Court in the case of CIT Vs Reliance Petro products Pvt Ltd - 322 ITR 158(SC)".

3. Since the issue is common in these three appeals, we consider the facts as narrated in ITA No.89/Mds/2016 of assessment year 2005-06 for adjudication.

4. The Brief facts of the case, the assessee is engaged in the business of promotion of housing plots. There was a survey operation on the business premises on 10.04.2007 and the assessee has admitted estimated profits for the assessment years as under:-

2005-2006 : Rs.30,00,000/-

2006-2007 : Rs.70,00,000/-

2007-2008 : Rs.70,00,000/-

In response to the notice u/s.148 of the Act for assessment year 2005-2006, the assessee filed return of income with total income of Rs.24,78,726/- and notices u/s.143(2) and 142(1) of the Act was also issued. The assessee in the return of income has offered excess income for all three years in comparison with the income estimated during survey operations, the Id.AO based on the survey report and also information of residential plots verified claim of expenditure relating to site development expenses, legal expenses, miscellaneous expenses and service charges and found not properly supported by vouchers and disallowed the expenses and passed order u/s.143(3)r.w.s. 147 of the Act dated 28.12.2011. Subsequently, the Assessing Officer initiated penalty proceedings. In the penalty proceedings, the Id. AR furnished reply by letter dated 9.01.2012 with explanations, reasons and reasonable cause referred at page 2 and 3 of his order as under:-

"There is no concealment of any income. We have declared more income for the assessment years 2005-06 to 2007-08 as per the returns of income filed than the income admitted at the time of survey. "

The additional tax liability is only due to the disallowance of part of certain expenses claimed as per the profit and loss account and there is no addition because of concealment of any income. We have not suppressed any income.

The delay' in filing of return of income is due to the reason that the staff who was maintaining the accounts has left the firm and the firm could not find proper person to maintain the accounts. Moreover the Managing Partner who is a woman is not proficient in accounts and was busy in marketing the project. Since the project was delayed and the land prices has increased, some of the sellers have refused to sell the lands and the Managing Partner was busy in : negotiation and litigation and due to this the Karanai Project was abruptly 'stopped Since the firm was operating with only few persons, -this is also the reason for delay in filing of the return.

There is no wilful suppression of any income or any information and all the details required by the assessing authority were furnished to the satisfaction of the authority. However, some advance tax was paid and most of balance tax amounts were paid before the receipt of the notice under section 148 of the Income-tax Act, 1961.

Due to the above reasons there was delay in filing of the return of income, but there was no concealment or suppression of any income and all tax dues as per the return was paid The amount outstanding as per the order is only the tax on ,disallowance of some expenses and the interest for late payment of the tax. Considering the above, we request you to kindly deap the penalty proceedings as per the notice.

Due to change in incumbency, a letter u/s 129 of the I.T. Act was issued on 5.6.2012. In response to this, the assessee's authorized representative appeared and furnished reply vide letter dated 14/06/2012. In the reply, the assessee firm stated the following decisions of various High Courts that the disallowance of certain expenses and hence increase in assessed income does not warrant levy of penalty u/s 271(1)(c) of the Income Tax Act.

"Simplex Pharma (P) Ltd Vs. Deputy Commissioner of Income Tax (2012) Taxmann.com 254 (Delhi) (2011) 11 ITRO 576 (Delhi)

Dholu Construction & Projects Ltd. Vs Income Tax Officer

(2012) Taxmann.com 176 (AHD).

*Commissioner of Income Tax Vs Parasamal Babulal Jain
(2012) 15 Taxmann.com 338(JAR)*

*Commissioner of Income Tax Vs. AT & T Communication
Services India (P) Ltd. (2012) 18 Taxmann.com 144(DEL).*

The Id. Assessing Officer considered the submissions but ignored the reasons for not filing return of income within due date u/s.139(1) of the Act. The Id. Assessing Officer observed that income has been offered to tax only after survey u/s.133A of the Act and concealment of income is not due to disallowance of certain expenses but due to survey conducted by the Department. Further the assessee has offered income only after survey and treated the assessed income as concealed income and Id. Assessing Officer levied minimum penalty of Rs.2,00,000/- for the assessment year 2005-2006. Aggrieved by the order, the assessee filed an appeal.

5. In the appellate proceedings, the Id. Authorised Representative argued grounds that the assessee has not concealed or furnished inaccurate particulars and mere delay in filing return of income u/s.139(1) of the act cannot lead to concealment of income. The Id. Assessing Officer has not considered the explanations and circumstances in which written submissions were filed and return of income was filed belatedly. The explanations are bonafide and there

is no deliberate intention to file belated return of income. The assessee has proved to the satisfaction by paying taxes and balance due before notice u/s. 148 was issued and relied on the decision of CIT vs. Reliance Petro Products Pvt. Ltd 322 ITR 158(SC). The assessee filed written submissions on 13.10.2015 explaining the circumstances with details and except for impugned three assessment years advance tax and self assessment tax was paid within time and observed at para 4.2 & 4.3 as under:-

“4.2. The appellant also submitted that penalty u/s 271(1)(c) requires concealment of particulars or submission of inaccurate particulars by the appellant. The Assessing Officer should have noted the fact that the appellant has been regularly filing her income tax returns and for the impugned three assessment years the appellant has even paid advance tax and before issuance of Notice u/s. 148 the appellant has paid self-assessment tax and all the tax dues. The appellant stated that returns of income for these three years have not been filed due to difficulty beyond their control. The addition was made on the basis that the appellant has filed return of income u/s. 139(1) after conduct of survey by the department and that this cannot be a ground for initiating penal action.

4.3. The appellant placed reliance on the following decisions:

- (i) CIT Vs Reliance Petro Products Pvt. Ltd. 322 ITR 158 (SC).*
- (ii) CIT Vs Rajasthan Spinning and Weaving Mills Ltd. 224 CTR 1 (SC)*
- (iii) Dilip N Shroff Vs JCIT 291 ITR 519(SC)*
- (iv) CIT Vs VIP Industries 122 TTJ 289 (Mum)*
- (v) CIT Vs Kamby Software 122 TTJ 721 (Mum)*
- (vi) CIT Vs Siddarth Enterprises 184 Taxmann 460 (P&H)”.*

The Id. Commissioner of Income Tax (Appeals) considered submissions, judicial decisions and findings of the Assessing Officer and made elaborate discussions and observation at page 5 to 12 of his order and dealt on various High Court and Tribunal decisions and distinguished the decisions relied by the assessee by upholding with the findings of the Assessing Officer and confirmed the Assessing Officer order at page 14 of order as under:-

“(i) The decision .of the jurisdictional High Court in the case of CIT Vs. Krishna & Co [1979] 120 ITR 144 (MAD), discussed in para 5.1.4. (supra), alongwith the clear cut conclusion of concealment of income, arrived at by the Assessing Officer.

(ii) The fact that in the assessee's case, Return of Income for all the three Asst. Years were filed for the very first time only in response to Section 148, and hence, this cannot, by any stretch of imagination, be considered as voluntary' filing of return u/s. 139(1).

(iii) Had there been no survey, the assessee would not have admitted the income and concealment has been established on account of survey only.

Hence the fact of concealment of income has been established by the Assessing Officer, and his action in imposing the penalty is upheld”.

Aggrieved by the order of the Commissioner of Income Tax (Appeals) the assessee filed an appeal before Tribunal.

6. Before us, the Id. Authorised Representative reiterated the submissions made before Assessing Officer and appellate proceedings. The Id. Commissioner of Income Tax (Appeals) not appreciated the circumstances were the assessee has not concealed any part or furnished any inaccurate particulars of income and mere delay in filing return cannot be ground for levy of penalty. The explanations filed by the assessee are overlooked and also reasons for belated filing of return are ignored without any basis and there is no deliberate intention to file the return of income belatedly and supported the grounds and arguments with Judicial decisions and filed affidavit of the partner of the firm explaining the reasons, situations, delay in filing the return and genuine hardship due Health issues and market scenario of recession during the period and prayed for deleting the penalty.

7. Contra, the Id. Departmental Representative relied on the findings of the lower authorities order and opposed the grounds.

8. We heard the rival submissions and perused the material on record and judicial decisions. The Id. AR of the assessee substantiate his arguments that levy of penalty is not a valid act as per explanations provided in provisions of the Act and also the hardship situation of the

assessee does not warrant for levy of penalty. The Id. Authorised Representative drew our attention to the affidavit filed by the Managing Partner Mrs. M. Bharathi Devi and explaining the genuine hardship and health issues as under:-

"I, M. Bharathi Devi, wife of S. Mohan, residing at "Dhevi Illam' No.4/252, East Coast Road, Neelankari, Chennai 600 115 solemnly affirm as under:-

1.1 am the Managing Partner of M/s/ Harrington House, a partnership firm having its office at No. 37(Old No.18), 3rd Main Road, Raja Annamalaipuram, Chennai-600028. The firm was registered on 29th September 2000 and commenced its business of buying lands, dividing the same into housing plots, getting approval from appropriate authorities and marketing the plots in the year 2001-2002.

2. There was delay in filing of the return of income for the assessment years 2005-06, 2006-07 and 2007-08 relating to the previous year 2004-05, 2005-06 and 2006-07. During the accounting year 2004-05, I was suffering from abdominal pain problem and was advised by the doctor to remove the uterus, otherwise it may lead to development of cancerous cells in the uterus. As per the advice of the doctor, I have undergone operation in August 2004 for removal of uterus. After the operation it took 6 months for me to recover.

3.The above health problem affected my movement and work and this also one of the reason for delay in finalizing the accounts and filing of the return of income".

Similarly, affidavit of the Assistant of Accounts department was filed as she left the service from May, 2005 and joined in July, 2007. The partner of the firm also filed affidavit explaining detailed aspect of business and statutory works with the financial conditions and tax payments. All three affidavits are filed to substantiate that there is no wanton act or willful default in filing return of income and there is no concealment of income. In survey operation at business premises statement was recorded by the Department and assessee firm has voluntarily offered income. The assessee further demonstrated the payment of tax liability before issue of notice u/s.148 of the Act. The Id. Authorised Representative drew our attention to the chart explaining that the assessee on the date of survey offered income and subsequently paid taxes before completion of assessment. On perusal of the statements the assessee has paid taxes for the assessment year 2005-06 ₹3,00,000/- and assessment year 2007-08 ₹3,00,000/- before date of survey on 10.04.07. The assessee firm started paying taxes considering income offered in the survey operations but the contention of the Id. Assessing Officer that assessee has concealed the particulars and submitted in accurate particulars and filed the return of income belatedly after issue of notice u/s.148 cannot be overlooked the assessee firm was conscious of income tax liability though the return was not filed but paid self assessment tax in piece meal before

the survey on 10.04.2007. The assessee also paid advance tax and self assessment tax after the date of survey in respect of subsequent assessment years also. We considering the apparent facts, affidavit, circumstantial evidence and payment of tax liability post and pre-survey operations u/sec. 133A of the Act remit the disputed issue to the file of the Assessing Officer for recomputation of penalty and the assessee shall be provided adequate opportunity of being heard before passing the order.

9. In the result, the appeals of the assessee in ITA Nos. 89, 90 & 91/Mds/2016 for assessment years 2005-06, 2006-07 & 2007-2008 are partly allowed for statistical purpose.

Order pronounced on Thursday, the 28th day of April, 2016, at Chennai.

Sd/-

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:28.04.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF