

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 2122/Mds/2016

निर्धारण वर्ष /Assessment Year : 2009-10

S.P.Swaminathan,
C/o. Shri S.Sridhar, Advocate,
112/1, Periyar Street,
Erode – 638001.

v. Assistant Commissioner of Income
Tax, Circle -2,
Coimbatore.

PAN No. AHXPS 5015K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S.Sridhar, Advocate [Erode]
प्रत्यर्थीकीओरसे/Respondent by : Shri Supriyo Pal, JCIT

सुनवाईकीतारीख/Date of Hearing : 09.08.2016

घोषणाकीतारीख/Date of Pronouncement : 23.09.2016

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the CIT(A) -3, Coimbatore dated 23.05.2016 and pertains to Assessment Year 2009-10 confirming the penalty levied by the assessing officer under Section 271 (1) (c) of the Act.

2. Shri S.Sridhar, the learned counsel for the assessee submitted that the Assessing Officer levied a penalty of Rs.19,89,777/- under Section 271(1)(c) of the Act. The learned counsel for the assessee submitted that the assessee was in the business of plying vehicles and in Real Estate. The assessee claimed an expenditure of Rs.1,46,32,609/- in respect of real estate business. In the course of assessment proceedings, the Assessing Officer find that the expenditure claimed by the assessee towards real estate business was very high. Accordingly, a lump sum of Rs.60,00,000/- was disallowed. The assessee explained before the Assessing Officer that the expenditure was disallowed on estimate basis. Therefore, there cannot be any penalty under Section 271(1)(c) of the Act. The learned counsel for the assessee further submitted that the penalty can be levied under Section 271(1)(c) for furnishing inaccurate particulars of income or for concealment of any part of the income. In the case before us, according to the learned counsel for the assessee, it is not the case of the revenue that the assessee has concealed any part of the income or furnished inaccurate particulars of income. The assessee incurred expenditure in real estate business and the same was claimed as deduction in the return of income after furnishing all the particulars. The Assessing Officer found that the expenditure claimed by the assessee was highly excessive and restricted the expenditure by disallowing the claim of the assessee to the extent of Rs.60,00,000/-. Since the assessee has furnished all the particulars and merely because of expenditure claimed by the assessee was partly disallowed by the assessing officer, there cannot be any concealment of income or furnishing

inaccurate particulars of income. Therefore, the penalty levied by the Assessing Officer as confirmed by CIT(A) is not correct.

3. The learned representative for the assessee placed reliance on the judgment of the Apex Court in the case of CIT Vs. Reliance Petroproducts (P) Ltd. reported in 322 ITR 158 (SC).

4. On the contrary, Shri Supriyo Pal, the learned department representative submitted that the assessee claimed expenditure of Rs.1,46,32,609/- for the real estate business. The assessing officer found that the expenditure claimed by the assessee was highly excessive and accordingly disallowed the portion of expenditure to the extent of Rs.60,00,000/-. The assessing officer found that the expenditure was disallowed on estimate basis because the exact amount could not be quantified. It does not mean that the assessee has not concealed any part of the income. The assessee claimed before the Assessing Officer that he agreed for addition before the Assessing Officer. Therefore, penalty cannot be levied. Agreement or concession given by the assessee cannot be a reason for not levy of penalty. When the Assessing Officer established that the assessee has concealed part of the income by claiming excessive expenditure in real estate business, it is to be construed that the assessee has concealed part of his income. Therefore, the Assessing Officer has rightly levied the penalty. Hence, the CIT(A) has rightly confirmed the penalty levied by the Assessing Officer.

5. We have considered the rival submissions on either side and also perused the material available on record. The Assessing Officer has disallowed a sum of Rs.60,00,000/- claimed by the assessee as expenditure in real estate business as excessive. The Assessing Officer found that the assessee has furnished inaccurate particulars which resulted in understatement of taxable income. Therefore, he levied penalty of Rs.19,89,777/-. The fact remains is that the assessee disclosed the entire income and claimed expenditure in real estate business. The expenditure claimed by the assessee was partly disallowed by the assessing officer. Therefore, the question arises for consideration is when the assessing officer disallowed part of the expenditure claimed by the assessee in real estate business, can we say that the assessee concealed any part of his income or furnished inaccurate particulars of such income? This issue was elaborately considered by the Apex Court in *Reliance Petro Products (P) Ltd.* (supra) and found that when the assessee has furnished all the particulars of his income and the expenditure merely because part of the expenditure claimed by the assessee was disallowed, it cannot be said that there was a concealment of any income or furnishing inaccurate particulars of income. In this case also, the assessee has furnished all the particulars of his income and the part of the expenditure claimed by the assessee to the extent of Rs.60,00,000/- was disallowed by the Assessing Officer as highly excessive. Therefore, this Tribunal is of the considered opinion that the expenditure claimed by the assessee towards real estate business cannot be construed as concealment of any income or furnishing inaccurate particulars of income. The assessee made a claim towards expenditure after

furnishing all particulars. Therefore, by any stretch of imagination, it could be said that the assessee furnished inaccurate particulars of income or concealed any part of his income. In other words, the claim made by the assessee cannot be a basis for levy of penalty under Section 271(1)(c) of the Act. Therefore, the penalty levied by the assessing officer is not justified. Accordingly, the orders of the lower authorities are set aside and the penalty levied by the assessing officer is deleted.

6. In the result, the appeal of the assessee stands allowed.

Order pronounced on 23rd September, 2016 at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd September, 2016.

sp.

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.