

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3371/Mds/2016

निर्धारण वर्ष / Assessment Year : 2013-14

Shri I. Ashok Kumar,
658, P.N. Palayam Road,
Puliyakulam,
Coimbatore – 641 045.

v. The Income Tax Officer,
Corporate Ward – 4,
Coimbatore.

PAN : AHQPA 2689 G
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

प्रत्यर्थी की ओर से/Respondent by : Shri A.V. Sreekanth, JCIT

सुनवाई की तारीख/Date of Hearing : 06.03.2017

घोषणा की तारीख/Date of Pronouncement : 31.05.2017

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 Commissioner of Income Tax (Appeals) -1, Coimbatore, dated 26.10.2016 and pertains to assessment year 2013-14, confirming the penalty levied by the Assessing Officer under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that for the assessment year under consideration, the assessee filed appeal before this Tribunal against the quantum order passed by the CIT(Appeals), in I.T.A. No.366/Mds/2015. However, at the time of hearing of the appeal, the assessee withdrew the same, therefore, the Tribunal dismissed the appeal as withdrawn.

3. Referring to Section 275(1)(a) of the Act, the Ld.counsel for the assessee submitted that the Assessing Officer is expected to pass a penalty order within six months from the end of the month in which the order of the appellate Tribunal was received by the Commissioner or Principal Commissioner, as the case may be. In this case, according to the Ld. counsel, the order of this Tribunal was dated 30.04.2015. The Assessing Officer passed the consequential order giving effect to the order of this Tribunal on 07.07.2015. Therefore, according to the Ld. counsel, the six months period has to be computed either on the date on which the Commissioner received the order or the date on which the Assessing Officer passed the consequential order on 07.07.2015. However, the Assessing Officer passed the penalty order only on 22.03.2016 which is beyond the period of limitation. Hence,

according to the Ld. counsel, the order passed by the Assessing Officer levying penalty under Section 271(1)(c) of the Act cannot stand in the eye of law.

4. Referring to proviso to Section 275(1)(a) of the Act, the Ld.counsel for the assessee submitted that when an appeal was pending before the Tribunal, proviso to Section 275(1)(a) of the Act is not applicable at all. In this case, the CIT(Appeals) as well as the Assessing Officer have misconstrued the proviso to Section 275(1)(a) of the Act and confirmed the penalty. Referring to the written submission filed by the assessee before the CIT(Appeals), the Ld.counsel submitted that the investments made in the landed property were very much available before the Assessing Officer, therefore, it cannot be said that the assessee has concealed any particulars of income or furnished inaccurate particulars.

5. The Ld.counsel for the assessee further submitted that the show cause notice issued by the Assessing Officer does not specifically mentioned whether the penalty was levied for concealment of particulars of income or for furnishing inaccurate particulars of income. Since the Assessing Officer has not applied his mind to the facts of the case and failed to indicate whether he

levied penalty for concealment of income or for furnishing inaccurate particulars, according to the Ld. counsel, the order passed by the Assessing Officer cannot stand in the eye of law.

6. On the contrary, Shri A.V. Sreekanth, the Ld. Departmental Representative, submitted that admittedly the assessee filed appeal for the year under consideration before this Tribunal and the same was withdrawn. Since the assessee has withdrawn the appeal filed before this Tribunal, proviso to Section 275(1)(a) of the Act is not applicable at all. According to the Ld. D.R., the assessee's case squarely falls under proviso to Section 275(1)(a) of the Act. Therefore, the order passed by the Assessing Officer levying penalty under Section 271(1)(c) of the Act is within a period of limitation. Referring to the show cause notice issued by the Assessing Officer, the Ld. D.R. submitted that no doubt, the Assessing Officer has not specified in the show cause notice whether he has proposed to levy penalty for concealment of income or furnishing inaccurate particulars of income. However, according to the Ld. D.R., that does not invalidate the penalty proceeding.

7. We have considered the rival submissions on either side and perused the relevant material available on record. In the show

cause notice issued to the assessee, the Assessing Officer has not specified whether he has proposed to levy penalty for furnishing inaccurate particulars or for concealing any part of income. The very object of issuing show cause notice is to give an opportunity to the assessee to explain why penalty should not be levied on the assessee under Section 271(1)(c) of the Act. Since the Assessing Officer has not specified the reasons for levying penalty under Section 271(1)(c) of the Act, i.e. whether for furnishing inaccurate particulars or for concealing particulars of income, the assessee may not have an effective opportunity to represent the matter before the Assessing Officer.

8. Since the proceeding before the Assessing Officer is a judicial proceeding, this Tribunal is of the considered opinion that effective opportunity should be given to the assessee for representing the matter before the Assessing Officer by specifying the reasons for which the Assessing Officer is proposing to levy penalty. Since such an opportunity was not given, this Tribunal is of the considered opinion that the judgment of Karnataka High Court in CIT v. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 is squarely applicable to the facts of the case. The assessee has

filed a copy of Supreme Court order wherein the SLP was dismissed by the Apex Court against the judgment of the Karnataka High Court.

9. In view of the above judgment of Karnataka High Court in Manjunatha Cotton and Ginning Factory (supra) and judgment of Apex Court in CIT v. SSA's Emerald Meadows, Special Leave Petition No.11485/2016, a copy of which is filed by the assessee, this Tribunal is unable to uphold the order of the CIT(Appeals). Accordingly, orders of both the authorities below are set aside and the penalty levied by the Assessing Officer is deleted.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 31st May, 2017 at Chennai.

sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 31st May, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)-1, Coimbatore

4. Principal CIT-1, Coimbatore

5. विभागीय प्रतिनिधि/DR

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

6. गार्ड फाईल/GF.