

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य 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 Nos.2294 & 2295/Mds/2015

निर्धारण वर्ष / Assessment Years : 2004-05 & 2006-07

Shri M.P. Subramaniam,  
C/o Shri S. Sridhar, Advocate,  
112/1, Periyar Street, Erode-1.

PAN : AMOPS 9561 J  
(अपीलार्थी/Appellant)

v. The Deputy Commissioner of  
Income Tax,  
Central Circle – I,  
Income Tax Office,  
Race Course Road, Coimbatore.  
(प्रत्यर्थी/Respondent)

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

प्रत्यर्थी की ओर से/Respondent by : Shri A.B. Koli, JCIT

सुनवाई की तारीख/Date of Hearing : 02.03.2016

घोषणा की तारीख/Date of Pronouncement : 29.04.2016

### **आदेश /O R D E R**

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

Both the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals)-3, cbe, dated 16.11.2015, for the assessment years 2004-05 and 2006-07. Since common issue arises in these appeals, we heard both the appeals together and disposing of the same by this common order.

2. Shri S. Sridhar, the Ld. counsel for the assessee, submitted that the Assessing Officer levied penalty under Section 271(1)(c) of the Income-tax Act, 1961 (in short "the Act"). The Ld. counsel submitted that there was a search in the premises of the assessee and the assessment was completed under Section 153A of the Act. The addition made by the Assessing Officer with regard to cash credit was confirmed by this Tribunal. Referring to the order of this Tribunal, the Ld. counsel submitted that all the creditors confirmed the advance made by them. However, this Tribunal, by applying human probabilities, rejected the contention of the assessee and confirmed the orders of the lower authorities. According to the Ld. counsel, the penalty proceeding is different from assessment proceeding. When the creditors confirmed the advance made by them, merely because the addition was made in the assessment proceeding that cannot be a reason for levying penalty. The Assessing Officer by simply referring to the observation made by this Tribunal, levied penalty without re-appreciating the material available on record. Therefore, the penalty levied by the Assessing Officer is not correct.

3. On the contrary, Sh. A.B. Koli, the Ld. Departmental Representative, submitted that the quantum addition was confirmed on the ground that the creditors belong to low middle-class family and their income is below ₹10,000/- per month. Therefore, by applying the human probabilities, this Tribunal confirmed the addition made by the Assessing Officer. Once the confirmations made by the creditors are rejected in the assessment proceeding, according to the Ld. D.R., the assessee now cannot claim that the penalty levied by the Assessing Officer is not justified.

4. We have considered the rival submissions on either side and perused the relevant material available on record. As rightly submitted by the Ld. counsel for the assessee, the creditors were examined under Section 131 of the Act by the Assessing Officer. All of them admitted that they advanced money. One Shri P. Mariappan, who was examined on 20.11.2009 under Section 131 of the Act, admitted that he advanced a sum of ₹3,00,000/- to the assessee in March, 2003. The said Mariappan clarified that the money was advanced for purchasing a land. The source for ₹3,00,000/- was sale proceeds of Shri Mariappan's house in Udumalpet. Similarly, Smt. Anbumani, who was also examined

under Section 131 of the Act, clarified that a sum of ₹2,00,000/- was advanced to her brother-in-law, the assessee. One Shri K. Jayaraman was also examined on 23.11.2009. He also admitted that he advanced a sum of ₹5,00,000/- to the assessee. He further explained that ₹2,00,000/- was given to the assessee from his savings and ₹1,00,000/- was from the amount received from his uncle's wife. Another sum of ₹2,00,000/- was given out of his savings. Therefore, it is obvious that the creditors confirmed the fact that they advanced the money. This Tribunal confirmed the addition made by the Assessing Officer in the assessment proceeding on the ground that the creditors have very meagre income. This Tribunal by applying the human probabilities, confirmed the addition made under Section 68 of the Act. The Assessing Officer levied penalty of ₹3,36,768/- for the assessment year 2004-05 and for the assessment year 2006-07, the Assessing Officer levied penalty of ₹67,320/-.

5. As rightly submitted by the Ld. counsel for the assessee, the assessment proceeding and the penalty proceeding are separate and distinct. The Assessing Officer is expected to re-appreciate the material available on record during the penalty proceeding. In the case before us, the Assessing Officer instead of re-appreciating the

material available on record, has simply reproduced the observation made by this Tribunal in the appeal against the assessment order and levied penalty. This Tribunal is of the considered opinion that when the creditors confirmed that they advanced money and the addition was made only by applying human probabilities, levy of penalty under Section 271(1)(c) of the Act is not justified. This Tribunal is of the considered opinion that the assessee has reasonable cause within the meaning of Section 273B of the Act. Therefore, the Assessing Officer is not correct in levying penalty under Section 271(1)(c) of the Act. Accordingly, the orders of lower authorities are set aside and the penalty is deleted for both the assessment years.

6. In the result, both the appeals of the assessee are allowed.

Order pronounced on 29<sup>th</sup> April, 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 29<sup>th</sup> April, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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