

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'D' BENCH: CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं  
श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER AND**  
**SHRI GEORGE MATHAN, JUDICIAL MEMBER**

आयकर अपील सं./ITA Nos.3286 & 3287/Mds/2016  
निर्धारण वर्ष /Assessment Year: 2012-13

Shri Kasi Viswanathan,  
Palaniappan, No.35, Ponnappa  
Chetty Street, Chennai – 600 003.

**Vs.** The Dy. Commissioner of  
Income Tax, Non-Corporate  
Circle-5, Chennai.

[PAN: AADPP 6886 E ]

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Mr.T. Vasudevan, Adv.
प्रत्यर्थी की ओर से /Respondent by	:	Mrs.R. Ilavarasi, JCIT
सुनवाई की तारीख/Date of Hearing	:	04.07.2017
घोषणा की तारीख /Date of Pronouncement	:	05.07.2017

**आदेश / O R D E R**

**PER GEORGE MATHAN, JUDICIAL MEMBER:**

ITA No.3286/Mds/2016 is an appeal filed by the assessee against the Order of Commissioner of Income Tax (Appeals)-5, Chennai, in ITA No.104/CIT(A)-5/15-16 dated 29.09.2016 for the AY 2012-13 against the confirmation of the levy of penalty u/s.271(1)(c) of the Act. ITA No.3287/Mds/2016 is an appeal filed by the assessee against the Order of Commissioner of Income Tax (Appeals)-5, Chennai, in ITA No.103/CIT(A)-5/15-16 dated 17.10.2016 for the AY 2012-13 against the confirmation of the levy of penalty u/s.271B of the Act.

2. Mrs.R. Ilavarasi, JCIT, represented on behalf of the Revenue and Mr.T. Vasudevan, Adv., represented on behalf of the assessee.

3. It was submitted by the Ld.AR that the return filed by the assessee was processed and the assessment was completed u/s.143(3) on 30.01.2015 wherein the AO had disallowed Rs.21,000/- being the donation made by the assessee and the addition of Rs.99,528/- representing the difference in the creditors balances as per the assessee's books and as per the creditors books. It was a submission that the total income declared by the assessee in his return was Rs.63,31,689/- and the total income assessed was Rs.66,18,160/-. As the additions were minor, the assessee had accepted the two additions and had not been filed any appeal. It was a submission that the assessee is a dealer in Bakery, confectionery, pharmaceutical, ice cream and beverage raw material. It was a submission that as a consequence of the addition, penalty proceedings had been initiated against the assessee. It was a submission that the difference in the creditors balances was on account of the trade discount which had been granted by the creditors. It was a submission that the assessee had not claimed the trade discount in its books as the creditors of the assessee were yet to discuss the quantity discount and the payment performance discount also. It was a submission that the assessee has provided all the particulars in his return and there was no concealment of income or furnishing of inaccurate particulars and this was also not the case of the AO. It was a submission that in respect of the

donation, the details had been furnished. However, the AO had disallowed on the ground that adequate proof had not been produced. It was a submission that the additions in the course of the assessment were made by making disallowance from the details furnished by the assessee and no penalty was leviable. It was a further submission that even the reply filed by the assessee has not been found to be false. Consequently, no penalty is leviable by placing reliance on the decision of the Co-ordinate Bench of this Tribunal in the case of M/s.Salem Automech (India) P. Ltd. in ITA No.2307/Mds/2014 dated 12.04.2017 and also the decision in the case of Mr.R.A.Palanisamy in ITA No.1730/Mds/2015 dated 06.04.2016.

4. In reply, the Ld.DR vehemently supported the orders of the AO & CIT(A). It was a submission that there was a failure on the part of the assessee to disclose true income. It was a submission that the evidences had not been properly furnished by the assessee, consequently the disallowance had taken place. In respect of sundry creditors, it was only because the AO verified the balances, it was found that there was an excess claim on the part of the assessee. It was a submission that the penalty was liable to be confirmed.

5. We have considered the rival submissions. A perusal of the Assessment Order in the present case clearly shows that the addition represents less than 0.5% of the total income disclosed by the assessee. Though three disallowances had been made by the AO in the Assessment

Order, penalty has been levied only in respect of two additions. A perusal of the penalty order shows that the assessee has filed his reply along with evidences to the penalty proceedings. This, reply of the assessee has been brushed aside as not accepted. The reply of the assessee has not been found to be false or improbable.

6. In these circumstances, respectfully following the decision of the Coordinate Bench of this Tribunal in the case of M/s.Salem Automech (India) P. Ltd. and in the case of Mr.R.A.Palanisamy referred to supra, we are of the view that as the explanation provided by the assessee has not been disproved, no penalty u/s.271(1)(c) is leviable on the assessee.

7. In the result, the appeal filed by the assessee is stands allowed.

**ITA No.3287/Mds/2016:**

8. It was submitted by the Ld.AR that the penalty u/s.271B had been levied on the assessee on account of the alleged failure on the part of the assessee to get his accounts audited within time and furnish the audit report. It was a submission that the assessee's Chartered Accountant Shri A.R. Chinniah was undergoing medical treatment on account of his illness and heart problem. It was a submission that the Auditor subsequently expired. It was a submission that on account of the illness of the assessee's Chartered Accountant, the return of the assessee was delayed and filed only on 16.11.2012. It was a submission that however audit

report had been obtained within the due date. It was a submission that the audit report was obtained on 30.09.2012. However, return was required to be filed on-line and as the assessee's Chartered Accountant unwell and subsequently expired, the return could be filed only on 16.11.2012. It was a submission that without filing the return of income, filing of the audit report could not have been done. It was a further submission that the reply of the assessee has been disbelieved alleging that the assessee could not furnish any proof to show that the accounts were audited as on 30.09.2012 or that the delay in filing returns was due to health problem of the Auditor. It was a submission that Shri A.R.Chinniah has expired. It was a further submission that audit report is dated 30.09.2015 proved that it was obtained on 30.09.2015. It was a further submission that the audit report was a supporting document to assist the AO in the course of the assessment, the audit report was very much available. It was a submission that there was no delay in obtaining the audit report and consequently no penalty was leviable.

9. In reply, the Ld.DR vehemently supported the orders of the AO & CIT(A). A perusal of the penalty order u/s.271B showed that the assessee is being asked to prove that the audit report has been obtained on the date as has been mentioned in the audit report, just because, the return of income along with such audit report was filed belatedly. This, in fact, is questioning the very veracity of the audit report. No defect in the audit report has been pointed out in the course of the assessment nor, as such,

audit report has been found wanting in respect of any of the issues. In any case, it is accepted fact that the audit report can be filed only with the return of income and the return of income has to be filed on-line. The illness of the assessee's Chartered Accountant has been proved by producing medical certificate. In these circumstances, we are of the view that the penalty u/s.271B in the assessee's case is not exigible in so far as the audit report has been obtained on 30.09.2012. In these circumstances, the penalty as levied by the AO and confirmed by the CIT(A) stands deleted.

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

11. In the result, both the appeals filed by the assessee are stands allowed.

Order pronounced in the Open Court on July 05, 2017, at Chennai.

Sd/-

(चंद्र पूजारी)

**(CHANDRA POOJARI)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: July 05, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

Sd/-

(जॉर्ज माथन)

**(GEORGE MATHAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF