

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL 'B' (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।

[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.2605/Mds/2016

निर्धारण वर्ष /Assessment year : 2012-2013.

Shri.M. Ganesan,
No. 3, 4th Cross Street,
Maniammal Street,
Kamarajapuram Madina Nagar,
Rajakilpakkam,
Chennai 600 073.

Vs. The Assistant Commissioner of
Income Tax,
Corporate Circle 4(1)
Chennai.

[PAN AANPM 6438K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. G. Baskar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri. B Sagadevan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 28-08-2017

घोषणा की तारीख /Date of Pronouncement

: 29-08-2017

आदेश / ORDER

In this appeal, assessee assails levy of penalty u/s. 271(1) (c) of the Income Tax Act, 1961 (in short "the Act") which was confirmed by the Id. Commissioner of Income Tax (Appeals)-8, Chennai through his order dated 21.06.2016.

2. Facts apropos are that assessee had filed his return of income for the impugned assessment year disclosing income from salary, house property and business. During the course of assessment

proceedings, it was noted by the Id. Assessing Officer that assessee had purchased an immovable property. Source for this purchase was enquired by the Id. Assessing Officer. Assessee thereupon claimed that he had sold gold worth ₹4,70,000/- on 16.08.2011 and utilized this sum for purchasing the property. Assessee also offered long term capital gains of ₹2,49,306/- arising from sale of gold. Contention of the assessee was that gold which was sold was purchased in financial year 1995-96. Ld. Assessing Officer was of the opinion that assessee was unable to show any evidence for purchase or possession of the gold. He made an addition of ₹4,70,000/- as income from other sources. It seems assessee did not move any appeal on the assessment.

3. Thereafter notice was issued to the assessee u/s. 271(1) (c) of the Act for levy of penalty for furnishing inaccurate particulars of income with regard to the gold. Explanation of the assessee was that gold which was sold by him was more than twenty years old and no evidence was readily available for purchase thereof. However, such explanation was not accepted by the Id. Assessing Officer. According to him, merely by giving an explanation, without satisfying the Id. Assessing Officer, would not relieve the assessee from penal proceedings. According to the Id. Assessing Officer, assessee could not produce any evidence for purchase of jewellery. He thus held that

assessee had furnished inaccurate particulars of income for a sum of ₹2,20,694/-. The said amount was arrived at by deducting long term capital gains of ₹2,49,306/- offered by the assessee, from the total consideration of ₹4,70,000/- claimed to have received on sale of gold. Penalty of ₹1,00,000/- was levied u/s. 271(1) (c) of the Act.

4. Assessee moved in appeal before the Id. Commissioner of Income Tax (Appeals) but did not meet with any success. Ld. Commissioner of Income Tax (Appeals) held that by virtue of judgment of Hon'ble Apex Court in the case of *CIT vs. Mak Data (P) Ltd 358 ITR 593*, surrendering of additional income merely with a view to avoid litigation or for buying peace, could not relieve an assessee from the rigours of penalty u/s. 271(1)(c) of the Act. As per Id. Commissioner of Income Tax (Appeals) assessee had agreed for the disallowance made by the Id. Assessing Officer for purchasing peace with the Department and therefore penalty u/s. 271(1)(c) of the Act was rightly levied.

5. Now before me, Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that long term capital gains arising from the sale of gold was shown by the assessee and accepted. According to him, once the sale of gold was accepted no part of the consideration received on sale of the gold could be

disbelieved. According to him, just because explanation given by the assessee was rejected, penalty could not have been levied u/s. 271(1)(c) of the Act.

6. Per contra, Id. Departmental Representative once again relying on the judgment of Hon'ble Apex Court in the case of *MAK Data (P) Ltd (supra)* submitted that assessee could not show any evidence for purchase of jewellery. Therefore, according to him, sale as such was not considered as genuine by the lower authorities. According to him, penalty was levied since assessee could not furnish any particulars regarding source for acquiring the gold jewellery claimed to have been sold.

7. I have considered the rival contentions and perused the orders of the authorities below. Id. Assessing Officer had levied penalty only on a sum of ₹2,20,694/-. In other words, Id. Assessing Officer had deducted long term capital gains of ₹2,49,306/- admitted by the assessee from the consideration of ₹4,70,000/- claimed to have been received on sale of gold. There is no finding in the penalty order that claim of sale of gold on 16.08.2011 was a farce. The reason why penalty was levied is that assessee could not furnish any evidence for purchase of jewellery. Relevant para as it appears in penalty order is reproduced hereunder:-

"When explanation is called for from the assessee

with regard to the evidence for purchase of jewellery, the assessee was not able to produce the same stating that it was purchased long back i.e., in 1995-96 and could not produce the same. Now the burden is on the assessee to prove his stand with evidence. Till then the burden of proof lies with the assessee to prove that the failure to return correct income did not arise from fraud or gross or wilful neglect as laid down in Addl. CIT vs. Jeevanlal Shah in 245 ITR 244 (SC).

The assessee in this case, has not given the proper documentary evidence for the purchase of the jewellery. Mere giving of explanation for the source not to the satisfaction of the AO will not relieve the assessee from penal proceedings, As laid down in CIT vs. A. SreenivasaPai(2002) in 242 ITR 29,36 (Ker), the explanation offered by the assessee should be acceptable to the fault finding authority”.

Thus, the question before me is whether assessee's inability to produce evidence for purchasing jewellery claimed to have been sold would be sufficient to levy penalty u/s. 271(1) (c) of the Act. In my opinion to say that gold jewellery which was sold was purchased in the very same year is beyond preponderance of probability. Assessee could have very well not purchased the jewellery but used the amount for acquiring the immovable property. The preponderance of probability is that jewellery would have been purchased prior to the relevant previous years. In any case in such a situation, I cannot say that explanation offered by the assessee was not a plausible one. No doubt as pointed out by the Id. Departmental Representative, admission of income merely for purchasing peace from the Department would not be a good reason for not levying penalty by virtue of

judgment of Hon'ble Apex Court in the case of *MAK Data (P) Ltd (supra)*. However, Hon'ble Apex Court in the case *CIT vs. Reliance Petroproducts (P) Ltd 322 ITR 158* has clearly held that disallowance of a claim by itself, could not be a reason to levy penalty u/s. 271(1) (c) of the Act. In the case before me, having accepted the sale of jewellery, the presumption of purchase of jewellery to have been made in the same year, is not a probable one. Explanation offered by the assessee may not be sufficient to avoid an addition of income, but, in my opinion it does not come within the meaning of furnishing inaccurate particulars of income. Levy of penalty in my opinion was not warranted considering the facts and circumstances of the case. Such levy of penalty stands deleted.

8. In the result, the appeal of the assessee is allowed.

Order pronounced on Tuesday, the 29th day of August , 2017, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:29th August, 2017

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

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