

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1882/Mds/2014

निर्धारण वर्ष / Assessment Year : 2002-03

The Deputy Commissioner of
Income Tax,
Central Circle – IV(1),
Chennai - 600 034.

(अपीलार्थी/Appellant)

v. Shri K.M. Mammen,
No.17, Boat Club Road 3rd Avenue,
R.A. Puram, Chennai - 600 028.

PAN : AAEPM 0314 R

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1382/Mds/2014

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Shri K.M. Mammen,
No.17, Boat Club Road
3rd Avenue, R.A. Puram,
Chennai - 600 028.

(अपीलार्थी/Appellant)

v. The Deputy Commissioner of
Income Tax,
Central Circle – IV(1),
Chennai - 600 034.

(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by : Dr. U. Anjaneyalu, CIT

निर्धारिती की ओर से /Assessee by : Sh. R. Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of Hearing : 03.07.2017

घोषणा की तारीख/Date of Pronouncement : 27.09.2017

आदेश /O R D E R

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

Both the appeals of the assessee and Revenue are directed
against the very same order of the Commissioner of Income Tax

(Appeals) –I, Chennai, dated 25.03.2014 confirming the penalty levied by the Assessing Officer under Section 271(1)(c) of the Act for assessment year 2002-03. Therefore, we heard both the appeals together and disposing of the same by this common order.

2. Dr. U. Anjaneyalu, the Ld. Departmental Representative, submitted that on the basis of information received from Revenue authorities, it was found that the assessee has deposited / invested in favour of Webster Foundation, Vaduz in the bank account maintained with LGT Bank in Liechtenstein, Vaduz. According to the Ld. D.R., the quantum addition made by the Assessing Officer to the extent of ₹2,26,38,372/- under Section 69 of the Income-tax Act, 1961 (in short 'the Act') was confirmed by this Tribunal.

3. The Ld. Departmental Representative further submitted that the Assessing Officer has also initiated penalty proceedings. According to the Ld. D.R., the assessee claimed before the Assessing Officer that he has nothing to do with the transaction. The assessee has also claimed before the Assessing Officer that the investment was not made during the year under consideration, therefore, there cannot be any penalty in the year under consideration. According to the Ld. D.R., the Assessing Officer

rejected the claim of the assessee on the ground that the signature found in the declaration made in creation of endowment tallies with the signature of the assessee. It was also found that it is for the assessee to demonstrate how and when the money was deposited in the account of Webster Foundation. According to the Ld. D.R., the assessee has deposited money in the foreign bank after creating a trust in the name of Webster Foundation. The deposit made by the assessee was not disclosed to the Revenue authorities and taxes were not paid. After receiving information from foreign bank, the assessment was reopened and addition was made under Section 68 of the Act for unexplained investment. According to the Ld. D.R., the assessee is the beneficiary of the account. This was confirmed by this Tribunal in the quantum appeal in I.T.A. No.870/Mds/2011 dated 25.02.2013.

4. The Ld. Departmental Representative further submitted that the balance amount standing in LGT Bank as on 31.12.2001 is ₹7,78,437.80 in Swiss Franc currency. 1 Swiss Franc currency is equal to ₹29.0818 Indian rupee at the relevant point of time. Therefore, by applying the currency rate applicable as on 31.12.2001, the Assessing Officer added an amount of

₹2,26,38,372/-. The assessee, during the course of assessment proceeding, accepted and paid the taxes also, therefore, the CIT(Appeals) confirmed the penalty levied by the Assessing Officer. According to the Ld. D.R., the Assessing Officer levied the penalty at the rate of 300%. However, the CIT(Appeals) restricted the same to 100%. According to the Ld. D.R., the assessee transferred the funds to foreign account and deposited in LGT Bank in Liechtenstein Aktiengesellschaft, Vaduz, therefore, this is a grave/worst offence wherein the Indian economy was transferred to foreign country in an illegal manner, hence, the CIT(Appeals) ought to have levied 300% penalty. According to the Ld. D.R., the CIT(Appeals) is not justified in restricting the penalty to 100%. Therefore, the Revenue has filed the appeal.

5. On the contrary, Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that during the course of assessment proceeding, the assessee came forward to pay taxes without prejudice to his stand that he has nothing to do with the account maintained by Webster Foundation. The Ld.counsel further submitted that no amount was invested during the year under consideration. The amount deposited in LGT Bank in Liechtenstein,

Vaduz, in the name of Webster Foundation, found to be deposited in the earlier assessment year, therefore, at the best, the penalty can be levied for the earlier assessment year and not definitely for this year. On a query from the Bench, whether the addition was made in the quantum appeal during the year under consideration or earlier assessment year, the Ld.counsel submitted that this Tribunal found that the addition has to be made during the year under consideration since the assessee could not explain the dates of actual deposit of funds in the Webster Foundation with LGT Bank in Liechtenstein, Vaduz. The Ld.counsel further submitted that the penalty proceeding being an independent and separate proceeding, this has to be re-examined by the Assessing Officer with regard to actual date of deposit.

6. We have considered the rival submissions on either side and perused the relevant material available on record. On the basis of information said to be received by the Revenue authorities, it was found that the assessee has deposited funds in the name of Webster Foundation at LGT Bank in Liechtenstein, Vaduz, to the extent of ₹1.23 lakh Euro currency. A declaration of endowment was said to be made by the assessee on 24.03.2000. The amount

was transferred to the credit of Webster Foundation in Account No.01635517AA maintained with LGT Bank in Liechtenstein, Vaduz. The Assessing Officer found that the declaration of endowment was signed by the assessee. In the assessment order, the Assessing Officer has reproduced the entire information said to be received regarding the deposit of funds in the name of Webster Foundation where the assessee being a beneficiary and the examination made by the Assessing Officer.

7. Though the assessee claimed that he has nothing to do with Webster Foundation and the account maintained by it in LGT Bank in Liechtenstein, Vaduz, the assessee ultimately agreed to pay the taxes. No doubt, the assessee agreed to pay taxes without prejudice to his other contentions. One of the contentions is that the money was not deposited during the year under consideration. The fact remains that the balance as on 31.12.2001 is ₹7,78,437.80 Swiss Franc currency. The assessee could not give the details of deposit. In other words, the exact date on which the money was deposited and invested in LGT Bank in Liechtenstein, Vaduz could not be produced by the assessee either before the lower authorities or before this Tribunal. When the balance amount as on

31.12.2001 is confirmed in the account of Webster Foundation where the assessee was shown as beneficiary and endowment itself was created by the assessee, it is for the assessee to explain when the money was actually deposited in the bank account if at all the assessee intends to have the assessment for other assessment year. In the absence of such details, this Tribunal is of the considered opinion that the presumption is that the deposit was made during the year under consideration.

8. In fact, in the quantum appeal a similar contention was raised by the assessee before this Tribunal. This Tribunal found that it is for the assessee to establish when the investment / deposit was made in LGT Bank in Liechtenstein Aktiengesellschaft, Vaduz. Once the assessee furnished details, then the burden of proof will be shifted on the shoulder of Revenue. Since the assessee has not furnished any details about the date on which the balance amount was deposited, the presumption is it was deposited in the year it was found by the authorities. This is what exactly held by this Tribunal in the quantum appeal in I.T.A. No.870/Mds/2011.

9. We are conscious that assessment proceeding and penalty proceeding are different and independent. The authorities are

expected to re-appreciate the material available on record in the penalty proceeding. Mere addition made in the quantum assessment proceeding would not result in levy of penalty under Section 271(1)(c) of the Act automatically. In other words, each and every addition made in the assessment proceeding, cannot be construed to be concealment of income or furnishing of inaccurate particulars. However, in this case, the assessee claims that the money was not deposited during the year under consideration. The assessee has not provided the details of deposit of money in the account. In the absence of any details with regard to deposit or investment of money in the bank account, we do not find any reason to find fault with the authorities below that the balance as on 31.12.2001 is the money belonging to the assessee for the year under consideration. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly confirmed the penalty.

10. Now coming to quantum of penalty, the Assessing Officer levied penalty at 300%. However, the CIT(Appeals) restricted the same to 100%. This Tribunal is of the considered opinion that levy of penalty is the discretion of the Assessing Officer. The CIT(Appeals) has also power coterminous as that of Assessing

Officer. Therefore, when the lower authority exercised his discretion in restricting the penalty to 100% instead of 300% levied by the Assessing Officer, this Tribunal do not find any reason to interfere with the discretion exercised by the lower authority. Therefore, we do not find any reason to find fault with the CIT(Appeals) in restricting the penalty to 100%.

11. In the result, both the appeals filed by the Revenue and assessee stand dismissed.

Order pronounced on 27th September, 2017 at Chennai.

sd/-
(एस जयरामन)
(S. Jayaraman)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 27th September, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A) (Central)-I, Chennai
4. CIT, Central- I, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.