

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' 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

आयकरअपीलसं./I. T. A. No.2776/Mds/2016
(निर्धारणवर्ष / Assessment Year: 2012-13)

The Assistant Commissioner of Income Tax, Circle (1), Erode – 638 001.	Vs	M/s. R R Thulasi Builders India (P) Limited, Sakthi Mahal, 63, Perundurai Road, Erode – 638 001.
		PAN: AACR2519R
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Smt. Yamuna, JCIT
प्रत्यर्थीकीओरसे/Respondent by	:	Shri Philip George, Advocate

सुनवाईकीतारीख/Date of hearing	:	08.05.2017
घोषणाकीतारीख /Date of Pronouncement	:	27.07.2017

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

This appeal by the Revenue is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-3, Coimbatore dated 29.06.2016 in ITA No.234/15-16 for the assessment year 2012-13 passed u/s.250(6) r.w.s.271(1)(c) of the Act.

2. The Revenue has raised several grounds in its appeal, however the crux of the issue is that the Ld.CIT(A) has erred in

deleting the penalty of Rs.48,66,750/- levied by the Assessing Officer U/s.271(1)(c) of the Act.

3. The brief facts of the case are that the assessee is a private limited company engaged in the business of civil engineering contract works, filed its return of income for the assessment year 2012-13 electronically on 29.09.2012 admitting total income of Rs.7,28,63,730/-. The case was taken up for scrutiny under CASS and finally order U/s. 143(3) was passed on 30.03.2015, wherein the Ld.AO made several additions. Thereafter penalty proceedings was initiated and finally the Ld.AO levied penalty U/s.271(1)(c) of the Act with respect to the addition made towards closing work-in-progress of Rs.1,50,00,000/-.

4. During the course of assessment proceedings, it was observed by the Ld.AO that the assessee was consistently receiving mobilization advance against which the assessee was executing construction work for its clients. The clients of the assessee were also withholding the retention money which is treated as income by the assessee on receipt basis. The assessee was maintaining its books of accounts on mercantile

basis. However, the assessee failed to disclose the closing work-in-progress as on the end of the previous year and thereby understated his profits. When this was brought to the knowledge of the assessee by the Ld.AO, the assessee admitted the closing work-in-stock at Rs.1,50,00,000/-. Thus his income was enhanced to that extent. Since the assessee had not disclosed the closing work-in-progress or rather not taken any effort to disclose the closing work-in-progress in his books of accounts, the Ld.AO invoked the provisions of section 271(1)(c) of the Act and accordingly levied penalty at Rs.48,66,750/- being 100% of tax sought to be evaded.

5. On appeal, the Ld.CIT(A) deleted the penalty by observing as under:-

“6.0 I have carefully considered the grounds of the appellant and the penalty order u/s 271 (1) (c) of the Income Tax Act, 1961. In this case some discrepancies in the books of accounts of certain work sites were found by the Assessing Officer and the appellant has offered additional income during the course of scrutiny proceedings. This additional income is treated by the Assessing Officer as concealment and penalty u/s 271 (1) (c) has been levied. The Assessing Officer is correct in holding that additional income offered after detection by the Department for avoiding litigation and to purchase peace squarely falls in the ratio of the decision of the Apex Court in Mak Data (P) Ltd 358 ITR 593. But in that case income based on evidence from materials found with the sister concern was

not offered for assessment even after 10 months of survey during which there was detection by the Department. The distinct facts of the present case have to be looked at before applying the ratio of Mak Data (P) Ltd. In the instant case, the appellant has 47 work sites and discrepancy in work site accounts have been found by the Assessing Officer and the same has been treated as concealment and there subsequently offered by the appellant which has been considered for levy of penalty. The pertinent point to be looked at is that the accounts of the appellant will have to be seen at the entity level and not at the work site level. At the entity level, the bills accounted for during the year are more than the expenses incurred during the year. The expenses incurred at the site cannot be held as unaccounted though there has been failure on the internal control mechanism resulting in discrepancy in certain work sites. No concealment or inaccurate particulars have been furnished by the appellant. There is neither basis nor sufficient reasons for levy of penalty for concealment. The quantum addition is justified but levy of penalty is not supported adequately. The penalty levied is deleted.”

6. Before us the Ld.DR vehemently argued stating that the assessee had failed to disclose the closing work-in-progress in its statement of affairs, which resulted in understatement of income, which was wisely detected by the Ld.AO at the time of assessment, thereby plugged the loss of Revenue. He further argued stating that failure on the part of the assessee to disclose the factual state affairs of the assessee resulting in understatement of profit will amount to concealment of income as per the provisions of the Act. He therefore pleaded that the order

of the Ld.AO may be reinstated. The Ld. AR on the other hand relied on the order of the Ld.CIT(A).

7. We have heard the rival submission and carefully perused the materials on record. From the facts of the case it is apparent that the assessee is maintaining the books of accounts following the mercantile system of accounting. Further the assessee is declaring its profit on the basis of percentage method of completion leaving out the retention money which he accounts on receipt basis. While doing so, it is mandatory on the part of the assessee to compute the closing stock and disclose the same in the Profit & Loss account and the Balance Sheet, which the assessee has grossly failed to do so. This certainly will amount to concealment of facts which has also resulted in understatement of profits. The assessee had not even made an effort to estimate the closing work-in-progress and disclose the same in its statement of affairs. In such circumstances, we are of the considered view that the provisions of section 271(1)(c) of the Act will be directly applicable because there is concealment of fact with respect to closing work-in-progress which results in understatement of profit. Therefore, we are of the considered view that the Ld.AO was right in his realm to invoke the

provisions of Section 271(1)(c) of the Act, in the case of the assessee. Hence, we set aside the order of the Ld.CIT(A) and reinstate the order of the Ld.AO. The decision of the Hon'ble Madras High Court cited by the Ld.AR in the case of CIT vs. Gem Granites reported in 86 CCH 160 will not be applicable in the case of the assessee because the assessee has patently concealed the closing stock in its statement of affairs and thereby understated its profit.

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

Order pronounced on the 27th July, 2017 at Chennai.

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

Sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 27th July, 2017

JR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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