

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' 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 Nos.899, 900, 901, 902, 903, 904 & 905/Mds/2017

निर्धारण वर्ष / Assessment Years : 2007-08 to 2013-14

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

v. Shri J. Karthikeyan,  
U-9, 4<sup>th</sup> Main Road,  
Anna Nagar, Chennai - 600 040.

(अपीलार्थी/Appellant)

PAN : AANPK 9511 D

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. S. Vijayaprabha, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri T. Vasudevan, Advocate

सुनवाई की तारीख/Date of Hearing : 07.11.2017

घोषणा की तारीख/Date of Pronouncement : 16.11.2017

### **आदेश /O R D E R**

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

All the appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals) - 18, Chennai, for assessment years 2007-08 to 2013-14, deleting the penalty levied by the Assessing Officer under Section 271(1)(c) and 271AAA of the Income-tax Act, 1961 (in short 'the Act').

2. Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that for the assessment years 2007-08 to 2011-12, the CIT(Appeals) deleted the penalty by placing reliance on the order of this Tribunal in Smt. R. Hema Maheswari v. ACIT in ITA Nos.987/Mds/2013 & 1306/Mds/2013 dated 01.09.2016 on the ground that the penalty cannot be levied under Section 271(1)(c) of the Act. Referring to the order of this Tribunal, the Ld. D.R. pointed out that the provisions of Section 271AAA of the Act was not brought to the notice of the Bench. Referring to Explanation (1) (b) of Section 271AAA of the Act, the Ld. D.R. submitted that penalty under Section 271AAA of the Act can be levied only in respect of specified previous year. According to the Ld. D.R., "specified previous year" is the previous year ended before the date of search, but the date of filing the return of income has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the said date. Moreover, the year in which the search was conducted would also fall within the specified previous year. Therefore, according to the Ld. D.R., the specified previous year can, at the best, be assessment years 2012-13 and 2013-14 and not other assessment years. According to the Ld. D.R., admittedly, search was conducted in this case on

08.06.2012, therefore, the provisions of Section 271(1)(c) of the Act is very much applicable for the assessment years 2007-08 to 2011-12. Hence, the CIT(Appeals) is not justified in deleting the penalty levied by the Assessing Officer.

3. On the contrary, Shri T. Vasudevan, the Ld.counsel for the assessee, submitted that this Tribunal in the case of Shri A.N. Radhakrishnan v. ACIT in I.T.A. Nos.684, 685 & 686/Mds/2013 found that after 01.06.2007, no penalty can be imposed under Section 271(1)(c) of the Act. A similar view was also taken by this Tribunal in Smt. R. Hema Maheswari (supra). On a query from the Bench, whether the Explanation to Section 271AAA of the Act, which clarifies "specified previous year" was brought to the notice of the Bench? The Ld.counsel has fairly submitted that the Explanation to Section 271AAA of the Act was not brought to the notice of the Bench. On a query from the Bench, when the assessment years 2007-08 to 2011-12 do not fall within the specified previous year, can the Assessing Officer levy penalty under Section 271(1)(c) of the Act? The Ld.counsel submitted that the CIT(Appeals) followed the order of this Tribunal, therefore, penalty cannot be levied.

4. We have considered the rival submissions on either side and perused the relevant material available on record. No doubt, this Tribunal in the case of Shri A.N. Radhakrishnan (supra) and in the case of Smt. R. Hema Maheswari (supra), found that penalty under Section 271(1)(c) of the Act cannot be levied in respect of the matter which was subject matter of search operation on or before 01.06.2007. Now, the Ld. D.R. has brought to the notice of the Bench that the penalty under Section 271AAA of the Act has to be levied on the undisclosed income of the specified previous year. "Specified previous year" is defined in Explanation (1) (b) to Section 271AAA of the Act. The word "specified previous year" as found in Explanation (1) (b) to Section 271AAA (1) of the Act was not brought to the notice of the Bench when the Tribunal considered the matter in the case of Shri A.N. Radhakrishnan (supra) and in the case of Smt. R. Hema Maheswari (supra).

5. As rightly pointed out by the Ld. D.R., penalty under Section 271AAA of the Act can be levied only in respect of specified previous year. Specified previous year in this case is admittedly assessment years 2012-13 and 2013-14. Therefore, penalty under Section 271(1)(c) of the Act can very well be levied for the

assessment years 2007-08 to 2011-12. Since the earlier Bench of this Tribunal has not considered the word “specified previous year” as found in Explanation (1) (b) to Section 271AAA of the Act, this Tribunal is of the considered opinion that the order of this Tribunal in Shri A.N. Radhakrishnan (supra) and in the case of Smt. R. Hema Maheswari (supra) may not come to the rescue of the assessee. Therefore, the CIT(Appeals) is not justified in deleting the penalty.

6. Since the CIT(Appeals) has deleted the penalty on technical ground, he has not considered the case on merit. Therefore, this Tribunal is of the considered opinion that the matter has to be reconsidered on merit. In this case, the penalty was imposed on the claim of agricultural income made by the assessee. The Assessing Officer found that the assessee has not filed any material to substantiate the claim of the assessee. This Tribunal is of the considered opinion that giving one more opportunity to the assessee to file necessary material with regard to land holdings and nature of crop cultivated would not prejudice the interests of Revenue in any way. Giving one more opportunity to the assessee would definitely promote the cause of justice. Accordingly, the orders of both the authorities below are set aside and the issue of

penalty is remitted back to the file of the Assessing Officer for all the assessment years 2007-08 to 2011-12. The Assessing Officer shall reconsider the issue afresh in the light of the material that may be filed by the assessee and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

7. Now coming to assessment year 2012-13, the Assessing Officer levied penalty under Section 271AAA of the Act. However, the CIT(Appeals) deleted the penalty on the ground that the assessee has admitted undisclosed income during the course of search on the basis of the statement made under Section 132(4) of the Act. The assessee filed affidavit and explained the manner in which the income was derived. It is not in dispute that the assessee has paid taxes in respect of undisclosed income. Therefore, this Tribunal is of the considered opinion that the assessee has complied with the conditions laid down in sub-clause (ii) to Section 271AAA(2) of the Act. When the assessee has admitted the undisclosed income in the course of search operation and filed affidavit explaining the manner in which undisclosed income was derived and paid the taxes, this Tribunal is of the

considered opinion that the Assessing Officer is not justified in levying penalty under Section 271AAA of the Act. This Tribunal is of the considered opinion that the CIT(Appeals) has rightly deleted the penalty, therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

8. In the result, the appeals of the Revenue in I.T.A. Nos.899 to 903/Mds/2017 are allowed for statistical purposes. However, I.T.A. Nos.904 & 905/Mds/2017 are dismissed.

Order pronounced on 16<sup>th</sup> November, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 16<sup>th</sup> November, 2017.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-18, Chennai-34
4. Principal CIT, Central-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.