

आयकर अपीलीय अधिकरण, “बी’ न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
' B' BENCH : CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी न्यायिक सदस्य के समक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND Shri Duvvuru RL Reddy, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.No.578/Mds./2017

निर्धारण वर्ष /Assessment year : 2011-12

Mr.S.Kiruthigan Lokesh,
R K S Building,
Paramathi Road,
Namakkal 637 001.

Vs. The Income Tax Officer,
Ward -1(1),
No.138/3,LMR Shopping Arcade,
Salem Main Road,
Namakkal. 637 001

PAN AXOPK 2697 J]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Ms.S.Sriniranjini,Advocate
प्रत्यर्थी की ओर से /Respondent by : Mr.Nethra Pal, JCIT, DR

सुनवाई की तारीख/Date of Hearing : 17-08-2017
घोषणा की तारीख /Date of Pronouncement : 23-08-2017

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal of the assessee is directed against the order of the Commissioner of Income-tax (Appeals), Salem dated 09.01.2017 pertaining to assessment year 2011-12 passed under section 271(1)(c) of the Act.

2. The assessee has raised six grounds in its appeal. However, the crux of the issue is that the assessee is aggrieved by the order of the Ld. CIT (A) who had sustained the penalty levied at ₹1,23,410/- u/s. 271(1)(c) of the Act.

3. The brief facts of the case is that as per AIR information during the financial year 2010-11, the assessee has made cash deposits of ₹ 1,24,26,080/- into his SB Account maintained with IDBI Bank, Namakkal Branch. Summon u/s 131 was issued to the assessee and sworn statement recorded from him. It is stated in the penalty order that the assessee has stated that his mother Smt. S. Rajarajeswari and Smt. V. Mythili are partners in a business firm namely M/s. Star Egg Traders and his mother is the Managing Partner in M/s. Star Egg Traders which is carrying on the business of purchase and sale of eggs on whole sale. It is further stated in the penalty order that summon u/s 131 was issued to Smt. S. Rajarajeswari, Managing Partner of M/s. Star Egg Traders, Namakkal and she has confirmed that most of the cash deposits for egg sale proceeds were made in her son's SB Account at IDBI Bank Ltd. Namakkal and withdrawn from her son's account for payments to the poultry farmers & egg brokers. The Assessing Officer has also stated that she has produced her return of income for the assessment year 2011-12 together with date-wise break-up details of cash deposits to the tune of ₹69,48,910/- related to the business firm M/s. Star Egg Traders Namakkal in the assessee's SB maintained with IDBI Bank Ltd. It is further stated in the penalty order that for the remaining cash deposits

of ₹62,27,813/- the assessee has explained that his mother had made cash deposits out of sale proceeds from her own egg trading business and the assessee has agreed to offer the income at 8% of the cash deposits of ₹62,27,813/- which worked out to ₹4,98,225/-. The Assessing Officer further stated in the penalty order that neither the assessee nor his mother Smt. Rajeswari has offered income, out of the cash deposits made into bank to the tune of ₹62,27,813/- as turnover from her own egg trading business for the financial Year 2010-11. Hence the Assessing Officer has come to conclusion that the assessee had concealed the income of ₹4,98,225/- which was arrived from the deposits made into bank to the tune of ₹62,27,813/- and levied minimum penalty of ₹1,23,410/-.

3.1 Aggrieved by the order of Id. Assessing Officer, the assessee carried the appeal before the Ld.CIT(A). The Ld.CIT(A) confirmed the levy of penalty u/s.271(1)(c) of the Act by placing reliance in the judgement of Supreme Court in the case of Mak Data P. Ltd. Vs. CIT reported in 358 ITR 595(SC) wherein held that the voluntary disclosure does not release the assessee from the mischief of the penal proceedings and the law does not provide that when assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty. Against the order of Ld.CIT(A), now the Assessee is in appeal before us.

4. We have heard both the parties and perused the material on record. In this case there is no dispute that the cash deposited into assessee's bank account is from egg trading business of assessee's mother. In the assessment proceedings, the same was treated as income of assessee. Thereafter, the AO levied penalty towards these discrepancies noticed by him. In our opinion, the quantum addition is itself debatable whether such addition to be made in the hands of assessee, or not, as is evident from the facts narrated above. In such circumstances, it is not appropriate to levy of penalty on such discrepancies noticed by the AO. Accordingly, we are inclined to delete the penalty.

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

Order pronounced on 23rd August, 2017, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 23rd August, 2017.

K S Sundaram

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 |