

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
' C ' 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.2278/Mds./2016
निर्धारण वर्ष /Assessment year : 2008-09

Sri P Madhan Mohan,
81,Avvaiyar Street,
Erode 638 001.

Vs. The Income Tax Officer,
Ward 1(4), Erode.

PAN AGRPM 8759 K
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mrs.G.Vardini Karthik, Advocate
: Mr.Ashish Tripathi,JCIT, DR

सुनवाई की तारीख/Date of Hearing

: 21-09-2017

घोषणा की तारीख /Date of Pronouncement

: 27-09-2017

आदेश / ORDER

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal of the assessee is directed against the order of the Commissioner of Income-tax (Appeals)-3, Coimbatore dated 26.02.2016 pertaining to assessment year 2008-09.

2. There was a delay of 59 days in filing this appeal by the assessee. On perusing the appeal, we find that the assessee had filed the appeal with delay of 59 days dated 31.07.2016 seeking condonation of delay. The assessee stated in this petition that the delay of 59 days in filing the appeal before this Tribunal is on account of mixing up of papers in the office of assessee's Authorised Representative and it took time to locate the same and as soon as Id.A.R traced the records, he filed the appeal on 02.08.2016. We have gone through the reasons advanced by the assessee in his petition. In our opinion, there exists reasonable cause for filing the appeal belatedly. Accordingly, we condone the delay of 59 days in filing this appeal and admit the appeal for adjudication.

3. The assessee has raised the following grounds for our adjudication.

1. The order of the Commissioner of Income Tax (Appeals) is erroneous in law and opposed to the facts and circumstances of the case.
2. The CIT(A) failed to appreciate that fact that the Assessing officer did not indicate in the notice u/s 274 of the Act, whether the penalty proposed is for concealment of income or furnishing of inaccurate particulars.
3. The CIT(A) ought to have appreciated that the addition made on account of undisclosed income was only because of the Assessing officer has taken into account the guideline value and not that the appellant has failed to disclose any amount with an intention to evade tax.
4. The CIT(A) failed to appreciate the fact that the Hon'ble Tribunal while deciding the quantum appeal has given a clear finding that Sec.69B can be invoked by the Assessing officer in case where the assessee has received the

consideration and not in case the assessee has paid the consideration for acquiring a capital asset, which clearly shows that the assessing officer has not brought any material to show that the assessee has paid more than the amount shown in his books to allege that there is an unexplained investment/undisclosed income.

5. The CIT(A) failed to see that when the Hon'ble Tribunal as well as the CIT(A) in the quantum appeal has given a clear finding that the value fixed by the stamp authorities for the purpose of ascertaining the stamp duty cannot prove that the assessee had paid any amount in excess of what was recorded in the books, levy of penalty u/s 271(1)(c) is not valid.

6. The CIT(A) blindly confirmed the penalty failing to see that the same was levied without examining or enquiring the seller of the property on the actual amount paid by the assessee and which amounts to violation of natural justice

4. The brief facts of the case are that the assessee had filed his return of income on 17.03.2010 declaring a total income of ₹1,11,140/- and the assessment was completed on 30.12.2010 making an addition of ₹25,71,098/- as unexplained investment in the land. As the assessee had failed to offer any explanation with respect to the source for above mentioned investment, the Id. Assessing Officer initiated the penalty proceedings u/s.271(1)(c) of the Act. Aggrieved by the order of Id. Assessing Officer, the assessee carried the appeal before the Ld.CIT(A).

4.1 On appeal, the Ld.CIT(A) observed that the assessee is a purchaser of land. In the course of assessment, the Assessing Officer has made addition for unexplained investment in land by taking into account the guideline value. The guideline value is only the basis of computation of capital gains u/s 48 and is deemed as sale consideration u/s 50C of the Act.

In the quantum appeal, the Ld.CIT(A) has confirmed the addition by scaling down the addition of unexplained investment to ₹5,76,800/-. The appellant's contention that ₹5,76,800/- is not unexplained investment and the addition was accepted to co-operate with the department. Another ground is that inaccurate particulars or concealment is not made out by the Assessing Officer. Unexplained investment, or not satisfactorily explained clearly, fall within the meaning of inaccurate particulars of income. Here, the finding of the fact that there is ₹5.76 lakhs is undisclosed investment has been confirmed by the Commissioner of Income Tax (Appeals) Coimbatore.

4.2 Before the Ld.CIT(A) relating to the penalty proceedings appeal, the Id.A.R submitted the assessee came before this Tribunal on quantum addition of Rs.5,76,800/- in ITA No.732/Mds./2012 for assessment year 2008-09 vide order dated 27.02.2013 that though confirmed the additions of Rs.5,76,800/-, the Tribunal observed in para-8 that:-

“there was nothing in the record whatsoever to show that assessee had paid any money in excess of what was stated in the Conveyance Deed or in its cashbook. Assessing Officer had not examined the seller of the property or made any other enquiries to substantiate his findings that actual amount paid by the assessee was as per the value fixed by the stamp authorities. We are, therefore of the opinion that CIT(A) was justified in scaling down the addition of ₹5,76,800/-“

However, the penalty levied by the Assessing Officer is confirmed by the Ld.CIT(A). Against the order of Ld.CIT(A), now the Assessee is in appeal before us.

5. We have heard both the parties and perused the material on record. Admittedly, the argument of the assessee before the Ld.CIT(A) was that there was no good approach road to the property and there was only an eight feet lane from the main road. As per the assessee, the property was located 250 feet away from the main road. Value fixed by the RDO was accepted by the assessee for a reason, that document was required for presentation before the bank. Argument of the assessee was that adoption of the value of stamp duty authority could only be considered for the purpose of ascertaining capital gains, under section 50C of the Act. Assessing Officer had invoked Sec.69B of the Act. But, there was nothing found by the Assessing Officer to show any amount in excess of the consideration mentioned in the document. Assessee also produced a copy of trial balance before the CIT(A) to show that cost of property was duly reflected therein. Remand Report was sought by the CIT(A) from the Assessing Officer. In such remand report, Assessing Officer stated that the cash book was prepared subsequently and investment shown in the cash book was ₹5,76,800/- for the site. As per Assessing Officer, bank statement produced by the assessee did not reflect the purchase cost paid for the plot. Ld.CIT(A) was of the opinion that there was nothing on record to show payment of any amount over and above what was recorded in the purchase deed. Nevertheless, according to the Ld. CIT(A), the sum of ₹5,76,800/- claimed by the assessee as invested in the site, did not tally with the bank statement. Hence, according to him, consideration paid for

purchase of property remained unexplained, but the addition had to be restricted to ₹5,76,800/-, as recorded in the cash book of assessee.

5.1 The Ld.CIT(A) observed that only an amount of ₹5,76,800/- was not at all explained by the assessee towards purchase of the property and he confirmed the addition of ₹5,76,800/-, which was confirmed by the Tribunal. However, there is no cogent material to show that exact value of property except stamp duty fixed by the authorities under Stamp Act (RDO,Stamps), Coimbatore. In such circumstances, the Ld.CIT(A) reduced the addition to the extent of ₹5,76,800/- and this investment has not been explained by the assessee as required u/s.69B of the Act. The burden cast upon the assessee is not at all discharged, which was considered as unexplained investment, consequently penalty u/s.271(1)(c) is to be levied. Being so, we do not find any infirmity in imposing levy of penalty u/s.271(1)(c) of the Act and the same is confirmed.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced on 27th September, 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: 27th September, 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 |