

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.452/Mds/2017
निर्धारण वर्ष /Assessment Year: 2012-13

The Asst. Commissioner of Income
Tax, Non-Corporate Circle-15,
Chennai.

Vs. Shri Narasimhulu Gali
Munusami, 14/01, Krishnam
Aachari Avenue, Adyar,
Chennai-600 020.

[PAN: AAFPM 2699 Q]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.P.Radhakrishnan, JCIT

प्रत्यर्थी की ओर से /Respondent by

: Mr.G. Baskar, Adv.

सुनवाई की तारीख/Date of Hearing

: 19.04.2017

घोषणा की तारीख /Date of Pronouncement

: 07.06.2017

आदेश / ORDER

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the Revenue against the Order dated 18.10.2016 of Commissioner of Income Tax (Appeals)-15, Chennai, in ITA No.292/CIT(A)-15/2015-16 for the AY 2012-13 and raised the following grounds:

1. *The order of the Commissioner of Income Tax (Appeals) is contrary to the law and facts of the case.*
2. *The Ld CIT (A) erred to directing the AO to delete the penalty u/s.271(1)(c) for Rs.12,42,668/-.*
 - 2.1 *The Ld CIT(A) failed to appreciate that this is a deliberate attempt was made to conceal the income of the assessee, for the assessment year 2012-13, by furnishing inaccurate particulars of income, specifically with regard to the undisclosed income as per Form-26AS, disallowance of depreciation and addition of sundry creditors amounting to Rs.41,42,224/-.*
 - 2.2 *The Ld.CIT(A) erred in placing reliance on the decision of the Apex Court in the case of Reliance Petro Products Pvt Ltd., (322 ITR 158) when no divergent views on the issue exists and the facts were distorted so as to make bogus claim of Form 26AS, depreciation and sundry creditors.*
 - 2.3 *The Ld CIT(A) failed to appreciate that the details of income and depreciation and sundry creditors and accepted for disallowance which is a clear indication of furnishing inaccurate particulars or concealment of income.*
 - 2.4 *The Ld CIT(A) erred in placing reliance on the decision of the Apex Court in the case of Reliance Petro Products Pvt Ltd., (322 ITR 158) as it is distinguishable with reference to the facts of the case, when a direct ruling was available in the case of Sunil Chand Gupta Vs CIT (218 Taxmann 128(Allahabad) and in the case of M/s.Palkhi Investments & Trading Co.(P) Ltd Vs ITO, Mumbai (288 ITR 473) (Bombay) in relation to the facts of the present case.*
3. *For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.*

2.0 Delay:

The Revenue filed appeals with delay of 32 days and the Ld.AO filed the condonation petition explaining the reason for delay. We heard both the parties and condone the delay.

3.0 All the grounds of the appeal are related to the imposition of penalty u/s.271(1)(c) of IT Act. For the AY 2012-13, the assessee filed return of income declaring total income of Rs.1,07,28,130/- on 28.09.2012. The assessment was completed u/s.143(3) on total income of Rs.1,48,70,350/-. The AO made addition to the return of income as under:

Addition of undisclosed income as per Sec.26AS	Rs.	16,09,085.00
Disallowance of depreciation	Rs.	2,11,846.00
Addition of sundry creditors	Rs.	23,21,294.00
Total	Rs.	1,48,70,350.00

4.0 The AO initiated penalty for concealment of income and furnishing of inaccurate particulars and issued notice to the assessee calling for his explanation. The assessee explained that there was no concealment of income or furnishing of inaccurate particulars and the addition made by the AO was related to the advance received from Britannia Industries for sale of products which cannot be assessed as income as per IT Act, but accepted to purchase peace with the Department. The assessee further stated that the excess depreciation was claimed inadvertently. The assessee agreed for the addition to avoid protracted litigation with the Department and relied on the decision of CIT v. Manjunatha Cotton Jinning Factory v CIT and argued that the notice issued u/s.271(1) was defective by not making known the offence for which the penalty is initiated. Accordingly, argued that the notice issued u/s.274 r.w.s.271 needs to be quashed. Not being convinced with the explanation of the assessee, the AO levied the penalty of Rs.12,42,668/- being 100% tax sought to be evaded. Against the order of the AO passed u/s.271(1)(c) r/w 274, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the penalty holding that there is no concealment of income or furnishing of inaccurate particulars.

5.0 We heard the rival submissions and perused the material placed before us.

The AO in the Assessment Order made the addition of Rs.15,20,000/- mainly due to the difference in the form 26AS. The assessee explained before the AO that the amount of Rs.15,20,000/- represented loan amount and a sum of Rs.89,085/- was reimbursement of expenses. Both the components of loan and reimbursement does not constitute income. During the appeal hearing, the Ld.AR submitted that the assessee is engaged in business of franchise manufacturer of bread products and has contract for manufacturing of rusks for Britannia Industries Ltd. During the previous year relevant to the AY, the assessee has received a sum of Rs.15,20,000/- as advance from the Britannia Industries Ltd. for which the conversion bill was not raised and the amount was outstanding as loan against conversion. The remaining amount of Rs.89,085/- was reimbursement of unloading charges. The Ld.AR also produced the ledger account copy and reconciliation statement with Form-26AS. Wherein the assessee has received a sum of Rs.20.00 lakhs as loan against conversion on 27.12.2011 out of which Rs.15,20,000/- was outstanding. Form-26AS represents all the receipts relating to income loans and other miscellaneous receipts on which TDS required to be deducted. In the instant case, the Ld.AR has furnished sufficient evidence to show that the amount of Rs.15,20,000/- was an advance and the same fact was accepted by the AO in the Assessment Order. A sum of Rs.89,085/- was accepted as reimbursement of unloading charges. These facts are not disputed by the Revenue. The AO merely added back the loan and reimbursement of expenses to the

returned income. The AO has neither proved it as concealment of income nor established that the amount represents furnishing of inaccurate particulars hence does not attract penalty u/s.271(1)(c) and the penalty imposed by the AO on sum of Rs.16,09,085/- to difference in Form-26AS is cancelled.

6.0 The next issue is related to the penalty on disallowance of depreciation:

The AO made the addition of Rs.2,11,846/- on account of disallowance of depreciation. The assessee has purchased the machinery for Rs.25,93,624/- out of which the assets worth Rs.30,26,359/- was used for less than 180 days and claimed full amount of depreciation. Though the assessee at the time of assessment explained that it was a mistake, it is obligation on the part of the assessee to claim correct amount of depreciation. Had the case has been not selected for scrutiny, this issue would not have come to the notice of the Department and the excess depreciation of Rs.2,11,845/- continued to escape the income. Therefore, this is a clear case of concealment and the penalty levied by the AO on the issue of excess depreciation is confirmed and the assessee's appeal on this ground is dismissed.

7.0 The next issue is related to the levy of penalty on sundry creditors amounting to Rs.23,21,294/-:

The AO has made the addition of sundry creditors since the outstanding was more than three years. No other reason has been assigned by the AO in the Assessment Order. The Ld.AR argued that the amount of Rs.7,34,348/- is relating to AG Industries and the sum of Rs.15,86,976/- relating to quality print pack are opening balances and the AO cannot impose penalty u/s.271(1)(c) on the opening balances. It is undisputed fact that the assessee could not be established the genuineness of outstanding balances. Therefore, the AO made the addition to the returned income. The AO has not established that the sundry creditors are not genuine and no evidence was brought on record to show that the amount outstanding was bogus. Both the sundry creditors are opening balances. When the opening balances are added to the returned income, there is no case for penalty u/s.271(1)(c), unless it is proved by the AO that the outstanding balance was bogus. In this case, no such finding was given by the AO. Therefore, we are unable to uphold the penalty imposed by the AO and confirm the order of the Ld.CIT(A) on this issue. The assessee's appeal on this ground is allowed.

8.0 The next issue is defect in the notice issued u/s 274 r.w.s 271 for non-striking of irrelevant column relating to concealment of income/furnishing inaccurate particulars. The assessee relied on the decision of the Hon'ble Karnataka High Court in the case of CIT v. Manjunatha Cotton Jinning Factory. From the penalty order it is clear that

the AO has levied the penalty for concealment of income and furnishing inaccurate particulars. Therefore the AO has initiated penalty for both the offences of for concealment of income and furnishing inaccurate particulars and there is no defect in the notice. Hence this argument is not tenable and dismissed.

9.0 In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 7th June, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S.SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 7th June, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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