

आयकर अपीलार्थ आधिकरण, “ए” न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL BENCH, CHENNAI
श्री धुवु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A.No.1608/Mds/2017
निर्धारण वर्ष/Assessment Year:2012-13

M/s. Annai Arul,
210-C, Velachery Main Road,
Camp Road Junction, Selayur,
Chennai 600 073.
[PAN:AARFA9083G]

The Income Tax Officer,
Vs. Non Corporate Ward 22(1),
Chennai 600 045.

(अपीलाथ /Appellant)

(प्रत्यर्थ/Respondent)

अपीलाथ क ओर से / Appellant by : Shri S. Seetharaman, CA
प्रत्यर्थ क ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT
सुनवाई क तारख / Date of hearing : 22.01.2018
घोषणा क तारख /Date of Pronouncement : 31.01.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 10, Chennai dated 29.03.2017 relevant to the assessment year 2012-13 challenging confirmation of levy of penalty under section 271(1)(c) of the Income Tax Act, 1961 [Act+in short].

2. Brief facts of the case are that the assessee is engaged in the business of construction of residential buildings and filed its return of income

on 29.09.2012 declaring total income of ₹.14,27,030/-. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, the return filed by the assessee was taken up for scrutiny and notice under section 143(2) of the Act dated 06.08.2013 was served upon the assessee. During the course of scrutiny assessment proceedings, the assessee was requested to produce the books of accounts, bank statements, expenses details and TDS reconciliation statement, etc. In this case, a survey under section 133A of the Act was conducted on 23.01.2015 and a sworn statement was recorded from Shri Christopher Anthony Joseph, one of the Partners of M/s. Annai Arul on 23.01.2015. As per the details taken from assessee's computer for the period from 01.04.2011 to 31.03.2012, the collection receipt shows ₹.9,27,06,845/-, whereas, as per the profit and loss account filed with return of income for the financial year 2011-12 [A.Y. 2012-13] shows net receipt of ₹.8,29,82,358/- thereby there is a net difference of ₹.1,42,24,487/-. When the assessee's partner was asked to explain, he has submitted that some of the collection figures is inclusive of land value of U.D.S., which will be transferred to his individual account as some of the lands are in his name. The approximate amount due to this factor will be around ₹.70-72 lakhs. With regard to balance amount of ₹.70 lakhs, he explained that some of the flats finally sold in the financial year 2012-13 also, even though collection would have been taken place in the financial year 2011-12 and thus, he agreed to offer the difference of ₹.35 lakhs in the

assessment year 2012-13 and further .35 lakhs in the assessment year 2013-14 and pay the taxes accordingly. The assessee has not filed any revised return. In view of the above admission, .35.00 lakhs was added back to the total income of the assessee for the assessment year 2012-13 and assessed the total income of the assessee at .49,27,030/-. Against the addition, the assessee has not preferred any further appeal before the Id. CIT(A). Accordingly, the Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Act by issuing show cause notice dated 25.03.2015. The assessee has stated that the income has been voluntarily surrendered and therefore, the penalty is not leviable and requested to drop the penalty proceedings. After considering the submissions of the assessee, the Assessing Officer has observed that the surrender in this case came only after detection made during the course of survey conducted under section 133A of the Act. But for survey operation, the suppression of income would not have come into light and therefore, he held that it cannot be said that the surrender of income was voluntary. Accordingly, the Assessing Officer levied minimum penalty under section 271(1)(c) of the Act.

3. The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee and by relying upon various decisions, the Id. CIT(A) confirmed the penalty levied under section 271(1)(c) of the Act.

4. On being aggrieved, the assessee is in appeal before the Tribunal and submitted that the assessment was based on the admissions of the partner of the assessee during the survey proceedings, which, in turn, was based on the seized collection statement and the statement was furnished to the assessee only during the penalty proceedings. It was also submitted that the figures in seized collection statement was reconciled with the returned income and there was no difference in income and Assessing Officer did not found the explanations to be false/erroneous before levying penalty as required under section 271(1)(c) of the Act. Further, the Id. Counsel submitted that the case law relied on by the authorities below have no relevance as the reconciliation of income was made and explained and hence, there was no concealment of income or furnishing of inaccurate particulars warranting levy of penalty under section 271(1)(c) of the Act and prayed that the said penalty may be deleted.

5. On the other hand, the Id. DR strongly supported the orders of authorities below. He submits that the assessee has not given complete particulars in the original return of income filed on 29.09.2012 and only after the survey operation under section 133A of the Act, the partner of the assessee confessed the undisclosed income of the assessee and agreed for addition. Therefore, it cannot be held that the assessee has voluntarily

furnished complete particulars of income and thus, the Id. DR has pleaded that the appeal filed by the assessee should be dismissed.

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. It is an admitted fact that during the course of survey operations under section 133A of the Act, the Department detected the huge difference of .1,42,24,487/- between the sales connection taken from the assessee's computer and disclosed the sales in the profit and loss account filed with the original return of income. In view of the above detection, the partner of the assessee confessed and agreed for addition, which was also not contested in appeal before higher forum. Since the assessee has not disclosed the entire sales connection in the profit and loss account and declared its total income and thus, the Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Act. During the course of penalty proceedings, the assessee has agitated that the sales collection statement showing higher figure taken from the assessee's computer was not given to the assessee during assessment proceedings. Before the Tribunal also the assessee has raised similar ground. The so-called statement of sales collection was actually taken from assessee's computer during the course of survey proceedings, which is very much available in its computer and what was the necessity to give the same statement of sales collection once again to the assessee, since the

particulars are very much available in assessee's computer. It is not like any hand-written statement impounded during the course of survey, which is required to be given to the assessee for explanation. In fact, the so-called print-out taken from the assessee's computer during the course of survey operations was shown to the partner of the assessee at the time of recording the sworn statement, against which the partner of the assessee has confessed the undisclosed income, which were brought to tax during the course of assessment proceedings. Thus, the ground raised by the assessee stands rejected.

6.1 With regard to case law relied upon by the assessee in the case of CIT v. Gem Granites(Karnataka) in T.C.A. No. 504/2009 dated 12.11.2013, the facts are that, there were "on-money" transactions and cash of .27,00,000/- was seized. The assessee offered to admit the "on-money", but claimed that they will do so on completion of the projects under the 'completed contract method' and therefore, no income was offered by the assessee. The assessee contended that there was a mistake in the entries regarding the sale of flats to J.B. Exports and the assessee also filed copies of the entry register in respect of two flats and also in respect of other similar flats, which were sold to other parties. Therefore, it was contended that even J.B. Exports produced the documents before the Assessing Officer, which were examined by the department wherein, it was stated that no "on-money"

was paid to the assessee. Therefore, it was contended that the onus is on the department to prove that the non-disclosure of the said income was deliberate and intentional on the part of the assessee. Under these facts and circumstance, the Hon'ble High Court held that the onus shifts on the Revenue to show that the amount in question constituted their income and not otherwise. It was further noted that the onus cast upon the assessee has been discharged by giving a cogent and reliable explanation. Therefore, if the department did not agree with the explanation, then the onus was on the department to prove that there was concealment of particulars of income or furnishing inaccurate particulars of income. However, the onus which shifted on the department has not been discharged. In these circumstances, the Hon'ble High Court sustained the finding of the Tribunal on the aspect of the bonafides of the conduct of the assessee and accordingly, the Hon'ble High Court dismissed the appeal of the Revenue. Further, in the case of CIT v. Steel Centre [2014] 51 taxman.com 127 (Kar.), during the post survey assessment, the assessee was successful in getting confirmation letters from everyone, but could not produce some of the creditors during the course of assessment. It was not a case where assessee did not offer any explanation, nor the explanation offered by it, was found to be false or not found to be lacking bonafide. The assessee partially successful in proving its defence. In these circumstances, the Hon'ble Karnataka High Court has held

that the levy of penalty when evidences were produced at the penalty stage, imposition of penalty even if tax liability is admitted is not automatic.

6.2 Both the above case law relied upon by the assessee has no application to the facts of the present case. In the present case, the assessee has not given any explanation for the undisclosed income of .35 lakhs admitted for taxation other than what was stated during the course of survey proceedings in different language. Since the assessee was caught by the survey operation with huge difference between the sales collection statement available with assessee's computer and the sales admitted in the P&L account, the assessee has no explanation to offer but to confess undisclosed income. In the penalty order, the Assessing Officer has recorded a finding that the omission and commissions on the part of the assessee was not bonafide and was only designed approach to reduce the tax liability. Therefore, The Assessing Officer held that the assessee has furnished inaccurate particulars in the return of income and concealed the tax liability. Since the source of income remains unproved and unexplained, the penalty under section 271(1)(c) of the Act was levied in this case. By reiterating the submissions as made before the Id. CIT(A), it was the submission of the assessee that the tally printout taken at the time of survey was not a complete account and was corrected at the time of audit. The omissions and commissions were reconciled during the course of audit and

actual income was offered. The discrepancy in the net profit and the difference in various heads were also reconciled and were provided that the income admitted in the filed statement was more. Some of the receipts were not booked in the tally printout and corrected with the agreement and sales deeds at the time of audit. Likewise, expenses were also not booked properly as some of them were paid by the partners directly. If it is so, the assessee should have filed revised return by giving suitable explanations for the omissions and commissions before completion of the assessment. However, in this case, the assessee has not filed any revised return before completion of the assessment under section 143(3) of the Act. Therefore, it cannot be held that the omissions and commissions are bonafide.

6.3 So far as voluntary disclosure of particulars of income is concerned, the assessee has declared the income in the return only .14,27,030/- on 29.09.2012. No subsequent revised return of income was filed by the assessee before initiation of survey operations under section 133A of the Act on 23.01.2015. Thus, whatever undisclosed income of the assessee agreed during the course of survey proceedings cannot be held as voluntary disclosure of income of the assessee. Since there was huge variation of sales collection admitted in the profit and loss account and the sales collection statement taken from the assessee's computer, which was put to the assessee's partner to explain during the survey proceedings, the partner

of the assessee has no other option but to confess the undisclosed income of the assessee. Therefore, the undisclosed income admitted by the partner of the assessee, during the survey proceedings, cannot be termed as voluntary disclosure of particulars of income by the assessee. Just because the assessee paid tax on the undisclosed income, he cannot escape from levy of penalty under section 271(1)(c) of the Act. In this case, the assessee has not furnished true and complete particulars of income in the original return filed by the assessee and it is a clear cut case of concealment of income. But for survey operation, the concealed income would not have been brought to tax. Thus, we are of the considered opinion that the Id. CIT(A) has rightly confirmed the penalty levied under section 271(1)(c) of the Act. Accordingly, all the grounds raised by the assessee are dismissed.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on the 31st January, 2018 at Chennai.

Sd/-
(S. JAYARAMAN)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 31.01.2018

Vm/-

आदेश क० प्रतिलिपि अपेक्षित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. व्रभागीय प्रसिद्धि/DR & 6. गाडफाईल/GF.