

आयकर अपील अथवा अधकरण, श्री कृष्ण यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL BENCH, CHENNAI  
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुवुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष  
Before Shri A. Mohan Alankamony, Accountant Member &  
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I T.A. No. 402/Chny/2017

अंशधारण वर्ष/Assessment Year:2012-13

&

C.O. No. 59/Chny/2017[In I.T.A. No. 402/Chny/2017]

The Income Tax Officer,  
Non Corporate Ward 23(2),  
130-B, Mudichur Road, West  
Tambaram, Chennai 600 045.

Shri Shanmugham Ramamoorthy,  
Vs. No. 2, Sarathy Street, Pallavaram,  
Chennai 600 043.

[PAN:AAAPR2796J]

(Appellant)

(Respondent/Cross Objector)

Department by : Shri K. Ravi, JCIT  
Assessee by : Ms. Sushma Harini, A., Advocate  
सुनवाई का तारख/ Date of hearing : 08.03.2018  
घोषणा का तारख /Date of Pronouncement : 26.04.2018

**आदेश /ORDER**

**PER DUVVURU RL REDDY, JUDICIAL MEMBER:**

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) 10, Chennai dated 18.11.2016 relevant to the assessment year 2012-13 passed against 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 an individual and sold a property at door No.70/A/1, New Door No.8/70-A1, Srinivasa Perumal Koil

Street, Cantonment Pallavaram and the sale price of the land and building was .2,96,33,000/-. The assessee worked out the capital gain at .1,41,09,724/- and claimed deduction under section 54 of the Act for the entire amount and admitted nil income under long term capital gain. The Assessing Officer found during the course of assessment proceedings that the property sold was not a residential property but commercial property. The Assessing Officer also found that the property purchased out of the sale proceeds, was only an agricultural land of 7.5 acres which consisted of a small house measuring 990 sq.ft. and hence, disallowed the total deduction claimed by the assessee under section 54 of the Act of .1,84,99,503/- as the deduction was allowable only for residential property. Further, the Assessing Officer also observed from the return filed for consecutive assessment years that the assessee had owned more than two residential houses at the time of sale of his property and accordingly held that the assessee was not eligible for deduction under section 54F of the Act also.

3. In the penalty order, the Assessing Officer observed that the act of assessee in claiming a deduction that he is not entitled for also tantamount to suppression / concealment of income. Further such a claim also falls under furnishing of inaccurate particulars of income. Thus, by following the decision of Hon'ble Supreme Court in the case of Union of India Vs. Dharmendra Textile Processors 301 ITR 277, wherein, it was held that *mens*

*rea* not essential for civil liability of penalty and moreover, it was also a fact that this amount could not have been assessed but for the scrutiny assessment and there is no voluntary admission by assessee, the Assessing Officer levied penalty of .38,10,897/-.

4. The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee as well as facts of the case and by following the decision in the case of CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar.), the Id. CIT(A) deleted the penalty levied under section 271(1)(c) of the Act.

5. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR submitted that the assessee was not eligible to claim exemption either under section 54 or under section 54F of the Act and thereby furnished inaccurate particulars and concealed the income by claiming exemption, which was found during the course of scrutiny assessment. Therefore, the Assessing Officer rightly levied penalty under section 271(1)(c) of the Act, which should be confirmed by reversing the order of the Id. CIT(A).

6. Per contra, by filing Cross Objection, the assessee has strongly supported the order passed by the Id. CIT(A) in deleting the penalty levied under section 271(1)(c) of the Act and prayed for confirming the order passed by the Id. CIT(A).

7. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. In this case, regular assessment under section 143(3) of the Act was passed after issuing statutory notices. It is not the case of the Department that the return filed by the assessee was initially processed under section 143(1) of the Act and thereafter, it was detected that the income chargeable to tax has escaped assessment or there was any search or survey in the case of the assessee. In this case, the assessee has furnished complete particulars of income with a bonafide belief that whatever details furnished in the return or correct. If the Assessing Officer found any of the claim made by the assessee is not correct, he is suppose to reject such claim and the assessee is liable to pay tax. In this case also, the Assessing Officer held that the assessee is not eligible to claim deduction under section 54 or under section 54F of the Act and accordingly, the assessee agreed and paid tax, which was also not disputed. The Id. CIT(A) has observed that the Assessing Officer has not established anywhere in the assessment order that the assessee has concealed the particulars of income or furnished inaccurate particulars of income. He further observed that just because the assessee has accepted the addition in the scrutiny assessment, the Assessing Officer cannot levy penalty under section 271(1)(c) of the Act in a mechanical manner.

7.1 By referring the decision of the Hon<sup>ble</sup> Supreme Court in the case of CIT v. Reliance Petroproducts P. Ltd. 322 ITR 158, in the case of CIT v Manjuntha Cottan & Ginning Factory (supra), the Hon<sup>ble</sup> Karnataka High Court has held that even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry conducted by the authorities which has resulted in payment of such tax or such tax liability came to be admitted, and if not, it would have escaped from tax net as opined by the Assessing Officer in the assessment order. Accordingly, by following the above decisions, the Id. CIT(A) has held that penalty under section 271(1)(c) of the Act is not leviable on the assessee's claim of deduction under section 54 of the Act and deleted the penalty. Thus, we find no infirmity in the order passed by the Id. CIT(A) and accordingly, the ground raised by the Revenue is dismissed.

8. In the Cross Objection filed by the assessee, the assessee has strongly supported the order passed by the Id. CIT(A) and no new ground has been raised for adjudication. Since we have confirmed the order passed by the Id. CIT(A) in deleting the penalty levied under section 271(1)(c) of the

Act, and dismissed the appeal filed by the Revenue, the Cross Objection filed by the assessee become infructuous and accordingly dismissed.

9. In the result, the appeal filed by the Revenue and the Cross Objection filed by the assessee are dismissed.

Order pronounced on the 26<sup>th</sup> April, 2018 at Chennai.

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Sd/-  
(DUVVURU RL REDDY)  
JUDICIAL MEMBER

Chennai, Dated, the 26.04.2018

Vm/-

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