

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.628, 629, 630, 631, 632, 633 & 634/Chny/2018

निर्धारण वर्ष / Assessment Years : 2008-09 to 2014-15

M/s RMG Benefit Fund Ltd.,
No.38, Jeenis Road,
Saidapet, Chennai - 600 015.

v. The Assistant Commissioner of
Income Tax,
Central Circle – 2(1),
Chennai - 600 034.

PAN : AAACR 5172 K
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri G. Baskar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing : 23.05.2018

घोषणा की तारीख/Date of Pronouncement : 14.06.2018

आदेश /ORDER

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals)-18, Chennai, dated 20.12.2017, confirming the penalty levied by the Assessing Officer under Section 271D of the Income-tax Act, 1961 (in short 'the Act') for the assessment years 2008-09 to 2014-15.

Therefore, we heard all the appeals together and disposing of the same by this common order.

2. Shri G. Baskar, the Ld.counsel for the assessee, submitted that there was a search under Section 132 of the Act in the case of one Shri A.N. Radhakrishnan, who is a trustee in M/s Meenakshi Ammal Trust and Sri Muthukumaran Educational Trust. According to the Ld. counsel, the search was conducted on 10.10.2008. Based upon the material found during the course of search operation at the resident of Shri A.N. Radhakrishnan, an assessment was completed under Section 153C of the Act in the case of the assessee for assessment years 2002-03 to 2009-10. According to the Ld. counsel, the premises of the assessee was also searched on 30.07.2013. Subsequently, a search was carried on in the case of M/s Meenakshi Ammal Trust and M/s Sri Muthukumaran Educational Trust. An order under Section 153A of the Act was passed on 23.03.2016 for the assessment years 2008-09 to 2014-15. The Assessing Officer initiated penalty proceeding under Section 271D of the Act on 23.03.2016. According to the Ld. counsel, even though there was no limitation provided in the Act for initiating penalty proceeding under Section 271D of the Act, it

should be initiated within a reasonable period. Penalty proceeding cannot be allowed to hang over the head of the assessee without any limitation. In fact, the assessment was completed on 30.12.2010 after the search in the hands of Shri A.N. Radhakrishnan. A copy of the assessment order is available at page 1 of the paper-book. According to the Ld. counsel, the deposit was considered by the Assessing Officer in the assessment order dated 31.12.2010. therefore, the so-called cash receipt for which penalty proceeding under Section 271D of the Act was initiated for the assessment years 2008-09 and 2009-10 was within the knowledge of the Assessing Officer, at least from the date of the assessment order, i.e. 31.12.2010.

3. Shri G. Baskar, the Ld.counsel for the assessee, submitted that the Assessing Officer initiated penalty proceeding only on 23.09.2016 for the assessment years 2008-09 and 2009-10. Therefore, there was a delay of almost six years. According to the Ld. counsel, even though no limitation was prescribed for initiating proceeding under Section 271D of the Act, it should be initiated within a reasonable time and at any stretch of imagination, a period of six years cannot be construed as reasonable period for initiating

proceeding under Section 271D of the Act. Therefore, for the assessment years 2008-09 and 2009-10, according to the Ld. counsel, the penalty proceeding was barred by limitation. The Ld.counsel placed his reliance on the judgment of Madras High Court in M. Srinivasa Rao v. ACIT (2007) 295 ITR 136 and submitted that the Madras High Court found that though time limit was not prescribed under Section 143(3) of the Act, the proceeding initiated by the Assessing Officer after a lapse of six years could not be allowed to continue. Accordingly, the order was quashed. In view of this judgment of Madras High Court, according to the Ld. counsel, the order passed by the Assessing Officer levying penalty under Section 271D of the Act after a period of six years cannot be allowed to continue.

4. Shri G. Baskar, Ld.counsel for the assessee, submitted that the penalty order passed by the Assessing Officer is barred for all the assessment years under consideration. According to the Ld. counsel, the Assessing Officer by letter dated 23.09.2016, intimated the Additional Commissioner of Income Tax for initiating proceeding under Section 271D of the Act. The notice was, in fact, issued by the Additional Commissioner only on 28.10.2016. Referring to the

judgment of Delhi High Court in Principal CIT v. Mahesh Wood Products (P.) Ltd. (394 ITR 312), the Ld.counsel submitted that the limitation period has to be computed from the date of letter written by the Assessing Officer, i.e. on 23.09.2016. Therefore, according to the Ld. counsel, it is beyond the period of limitation provided for passing the order under Section 271D of the Act.

5. Coming to the merit of the appeal, Shri G. Baskar, the Ld.counsel for the assessee, submitted that the assessee-company is accepting caution / mess deposit from students of educational institutions run by M/s Meenakshi Ammal Trust and M/s Sri Muthukumaran Educational Trust. According to the Ld. counsel, the deposit from the students comes to nearly ₹15000/- per student. This was deposited by the Head of the insitutions on behalf of students. The deposits were made at the late hours of the day and on weekends since the students are coming from outskirts of Chennai. According to the Ld. counsel, the assessee was forced to accept the deposit in cash. Moreover, wherever the Trust was depositing, it was only entered in the books of account and there was no physical cash deposit. Placing reliance on the judgment of Madras High Court in CIT v. Idhayam Publications Ltd. (2006) 285

ITR 221, the Ld.counsel submitted that what was received by the assessee from the students and from the Trust on behalf of students was deposit. The trustees are directors in the assessee-company. According to the Ld. counsel, the transaction between the assessee-company and the Trust cannot be considered to be a loan or deposit. The Trust was holding current account. No interest was paid to the trustees or the Trust. Therefore, according to the Ld. counsel, the Assessing Officer is not justified in levying penalty under Section 271D of the Act.

6. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that there is no limitation prescribed under the Income-tax Act for initiating penalty proceeding. In the absence of any provision in the Act, according to the Ld. D.R., the Addl. Commissioner may initiate the penalty proceeding under Section 271D of the Act at any time. Therefore, importing limitation into the Income-tax Act, when the Parliament has not provided so, is beyond the scope of interpretation. According to the Ld. D.R., equity and hardship have no role to play in the income-tax proceeding. Therefore, the Assessing Officer,

according to the Ld. D.R., has rightly initiated the penalty proceeding.

7. Coming to the merit of the appeal, the Ld. Departmental Representative submitted that the assessee claims that the students are coming from outskirts of Chennai in the late hours and weekends, therefore, they are forced to receive the deposits in cash. According to the Ld. D.R., the trust is having bank account. They cannot say there was no bank account at all. Therefore, it could have transferred the amount by means of cheques or other known method. Therefore, according to the Ld. D.R., there is no reason for deposit of cash with the assessee-company. Hence, the CIT(Appeals) has rightly confirmed the penalty levied by the Assessing Officer under Section 271D of the Act.

8. We have considered the rival submissions on either side and perused the relevant material available on record. In some cases, the assessee has received cash exceeding ₹20,000/- from the Trust. The Trust appears to have given a list of students from whom the money was collected. The claim of the assessee-company is that the students are coming from outskirts of Chennai on weekends, therefore, the Trust has to collect money in cash and

transfer the same to the assessee. Admittedly, this appears to be a reasonable explanation. When the Trust is collecting money for mess and other deposits from the students in the late hours of the working day and week days, this Tribunal is of the considered opinion that transferring the amount to the assessee-company whose Director is also one of the trustees in the Trust cannot be found to be fault. Therefore, this Tribunal is of the considered opinion that there is no violation of Section 271D of the Act.

9. We have carefully gone through the judgment of Madras High Court in Idhayam Publications Ltd. (supra). In the case before Madras High Court, the assessee was engaged in the publication of books. The assessee accepted cash loan of ₹2,94,000/- from M/s Manian Creation, a sister concern, in violation of Section 269SS of the Act. The Revenue levied penalty under Section 271D of the Act. The assessee contended before the Assessing Officer that there was no loan or deposit. The Assessing Officer rejected the claim of the assessee and levied penalty. The Tribunal, however, found that the proprietor of the sister concern, which deposited the funds, was one of the directors of the company and there was a running current account in his name. Therefore, there is no

violation of Section 271D of the Act. In this case also, Shri A.N. Radhakrishnan is one of the directors in the assessee-company and he is also a trustee in other two Trusts. Therefore, this Tribunal is of the considered opinion that it is not a fit case for levying penalty under Section 271D of the Act.

10. Moreover, for the assessment years 2008-09 and 2009-10, the penalty proceeding was initiated almost after six years. In view of the judgment of Madras High Court in M. Srinivasa Rao (supra), the penalty proceeding should have been initiated within reasonable time even though no limitation was provided in the Income-tax Act. The threat of initiating penalty proceeding cannot be allowed to hang over the head of the assessee for an unreasonable period of time. There should be an end to the proceeding, that also within a reasonable period. Hence, in view of the judgment of Madras High Court in M. Srinivasa Rao (supra), the penalty proceeding initiated by the Assessing Officer for assessment years 2008-09 and 2009-10, after the expiry of almost six years, is barred by limitation.

11. In view of the above discussion, we are unable to uphold the orders of authorities below. Accordingly, the orders of the lower

authorities are set aside. The penalty levied by the Assessing Officer as confirmed by the CIT(Appeals) is deleted.

12. In the result, all the appeals filed by the assessee are allowed.

Order pronounced on 14th June, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member
चेन्नई/Chennai,

दिनांक/Dated, the 14th June, 2018.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-18, Chennai-34
4. Principal CIT, Central-2, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.