

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष।
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. No.2290/CHNY/2015.
निर्धारण वर्ष /Assessment year : 2007-2008.

Lalitha Jewellery Mart P. Ltd, **Vs.** The Assistant Commissioner of
No.123, Usman Road, Income Tax,
T. Nagar, Company Circle II(4)
Chennai 600 017. Chennai.

[PAN AAACL 1523A]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. N. Murali Kumaran and
Shri. K. Mahendran, Advocates.

प्रत्यर्थी की ओर से /Respondent by : Mrs. Ruby George, IRS, CIT.

सुनवाई की तारीख/Date of Hearing : 16-08-2018

घोषणा की तारीख /Date of Pronouncement : 21-08-2018

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

In this appeal filed by the assessee, it assails an order dated 01.09.2015 of Id. Commissioner of Income Tax (Appeals)-8, Chennai, confirming the penalty levied on it u/s.271 (1) (c) of the Income Tax Act, 1961 (in short "the Act").

2. Ld. Counsel for the assessee submitted that penalty was levied on an addition of ₹21,96,60,000/- and certain other disallowance made in the assessment. As per the Id. Authorised Representative, former amount was the share capital issued by the assessee during the relevant previous year, which was disbelieved by the Id. Assessing Officer, and the addition was made u/s.68 of the Act. Further, as per the Id. Authorised Representative, though such addition made by the Id. Assessing Officer was confirmed by the Id. Commissioner of Income Tax (Appeals) as well as by this Tribunal, assessee's further appeal before the Hon'ble Jurisdictional High Court in TCA Nos.435 and 436 of 2013 was successful. According to the Id. Authorised Representative, Hon'ble Jurisdictional High Court while upholding the disallowance made by the Id. Assessing Officer on expenses incurred for gifts and compliments had deleted the addition made for share capital. As per the Id. Authorised Representative, considering the judgment of Hon'ble Jurisdictional High Court, the levy of penalty for the impugned assessment year required a revisit by the Id. Assessing Officer.

3. Ld. Departmental Representative fairly admitted that the matter needed to be looked afresh by the Id. Assessing Officer in the

light of the judgment dated 11.08.2017 of Hon'ble Jurisdictional High Court in TCA Nos.435 and 436 of 2013.

4. We have considered the rival contentions and perused the orders of the authorities below. The penalty was levied on the assessee mainly for additions made disbelieving the issue of shares for the relevant previous year and for certain disallowance made for expenses on gifts and compliments. When the matter reached the Hon'ble Jurisdictional High Court, the questions of law framed were as under:

"(i) Whether the Appellate Tribunal is correct in confirming the assessment of share capital contributions as unexplained credit/ investment within the scope of Section 68/69 of the Act in spite of the material evidence filed before them and the lower authorities establishing clearly/discharging of initial burden/onus statutorily vested on the appellant company to provide the source ?

(ii) Whether the Appellate Tribunal is correct in law in confirming the assessment of share capital contributions as the income of the appellant company even though there were no materials in their possession of the respondent/Assessing Officer establishing such facts apart from mere suspicion as well as establishing perversity both on facts and in law in rendering their decision ? and

(iii) Whether the Appellate Tribunal is correct in law in sustaining the assessment of share capital contributions as the income of the appellant company on the application of the deeming provisions in Section 68/69 of the Act even though there was no legal mandate for the appellant company to establish/prove the 'source for source'?"

"Whether the Appellate Tribunal is correct in law in confirming the disallowance of expenses incurred on gifts and compliments for the purposes of business within the scope of Section 37(1) of the Act for want of further evidence even though such evidence were available in the records of the respondent indisputably in view of the impounding order passed earlier".

What was held by their lordships at paras 41 to 43 of the judgment is reproduced hereunder:-

41. However, the main theme, upon which, the Assessing Officer as well as the Tribunal proceeded to discredit the investors of the assessee is completely erroneous. They are both looking for proof beyond doubt. They are proceeding on an element of suspicion that the amounts of investments are really those of the assessee, which have been ploughed back by the assessee, whereas the settled principle of law is that any amount of suspicion, however strong it might be as well, is no substitute for proof. Suspicion is not sufficient enough to lead to a conclusion that the investments received by the assessee company are all manipulated receipts and on that basis, recorded a finding that the explanation of the assessee is not satisfactory.

42. On the other hand, the legal principle enunciated by the Supreme Court, as noticed supra by us, is that so long as the proof and identity of the investor and the payment received from him is through a doubtless channel like that of a banking channel, the receipt in the hands of the assessee towards share capital or share premium does not change its colour. The money so invested in the assessee company would still be the money available and belonging

to the investors. The consistent principle followed is that the investors' sources and credit worthiness cannot be explained by the assessee. If the Department has a doubt about the genuineness of the investors capacity, it is open to it to proceed against those investors. Without taking such a course of action, the Assessing Officer and the Tribunal are proceeding on conjectures that the assessee has, in fact, ploughed back the money. The very approach of the Assessing Officer and the Tribunal are completely opposed to settled legal principles enunciated and they have arrived at conclusions contrary to the legal principles on the subject. Further, they are finding fault with the assessee for the alleged failure of its investors in proving beyond doubt that they have the capacity to invest at the moment they did in the assessee company. That is clearly a perverse view, as the assessing officer is not expected to perform a near impossibility. The assessee cannot call upon its investors to disclose all such business transactions they carried on in the immediate past and as to how much they made from their respective business enterprises. The assessee cannot also call upon its investors to prove their good business sense in investing in the assessee company, as such investors cannot gain any controlling stake.

43. In the result, the questions of law framed in TCA.No.435 of 2013 are answered in favour of the assessee and against the Revenue. Hence, TCA.No.435 of 2013 is allowed. Consequently, MP.No.1 of 2014 is closed".

In the light of the above judgment, we are of the opinion that the question whether any penalty is to be levied on the assessee u/s.271(1) (c) of the Act and if so, on what amount, requires a fresh look by the Id. Assessing Officer. We therefore set aside the orders of the lower authorities and remit the issue back to the file of the Assessing Officer for consideration afresh in accordance with law.

5. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced on Tuesday, the 21st day of August, 2018, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:21st August, 2018.

KV

Sd/-

(अब्राहम पी. जॉर्ज)
(ABRAHAM P. GEORGE)

लेखा सदस्य /ACCOUNTANT MEMBER

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 |