

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' 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.551 & 552/Chny/2018

निर्धारण वर्ष / Assessment Years : 2005-06 & 2006-07

Dr. (Late) S. Ashok,
Represented by Dr.Anisha Ashok,
Legal Representative,
121, G.N. Chetty Road, T. Nagar,
Chennai - 600 017.

v. The Assistant Commissioner of
Income Tax,
Non-Corporate Circle – 1,
Chennai - 600 034.

PAN : AABPA 2448 M
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Ms. S. Vijayaprabha, JCIT

सुनवाई की तारीख/Date of Hearing : 16.08.2018

घोषणा की तारीख/Date of Pronouncement : 12.09.2018

आदेश /O R D E R

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

Both the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals) -2, Chennai, dated 15.09.2017, confirming the penalty levied by the Assessing Officer under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. There was a delay of 46 days in filing both the appeals by the assessee. The assessee has filed a petition for condonation of delay. We have heard the Ld.counsel for the assessee and the Ld. D.R. We find that there was sufficient cause for not filing the appeals before the stipulated time. Therefore, we condone the delay and admit both the appeals.

3. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the assessee is a medical professional. The assessee claimed deduction in respect of the salary paid to his wife Dr. Rani Ashok, who is also a qualified medical professional. According to the Ld. counsel, the Assessing Officer disallowed the claim of the assessee on the ground that the assessee's wife Dr. Rani Ashok has not attended any patient due to depression. Therefore, according to the Ld. counsel, the payment of salary to Dr. Rani Ashok was disallowed. In fact, the assessee paid taxes and has not challenged the addition made by the Assessing Officer. The Ld.counsel submitted that an amount of ₹7,93,845/- was found during the course of search operation. In fact, this amount of ₹7,93,845/- belongs to M/s Garuda Overseas (P) Ltd., a company managed by Dr. Rani Ashok. According to the Ld. counsel, the

company M/s Garuda Overseas (P) Ltd. has offered this amount for taxation, therefore, it is not a case for levy of penalty.

4. On the contrary, Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that on examination, Dr. Rani Ashok made a categorical statement before the authority that due to depression, she had not attended the patients. On a query from the Bench, when Dr. Rani Ashok was under depression, how a statement was recorded from her and how that statement was relied upon by the Assessing Officer for levying penalty? The Ld. D.R. could not give any explanation. According to the Ld. D.R., since Dr. Rani Ashok could not attend any patient, the salary paid by the assessee is a bogus claim made by him. Moreover, according to the Ld. D.R., a sum of ₹7,93,845/- was also found during the course of search operation. The assessee claimed that the money belonged to M/s Garuda Overseas (P.) Ltd., which is an afterthought. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the penalty levied by the assessee.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee is

a medical professional. His wife Dr. Rani Ashok is also admittedly a qualified medical professional. The claim of the Revenue is that Dr. Rani Ashok did not attend the patients for several years due to depression. The assessee admittedly paid taxes during the course of assessment proceedings. The question now arises for consideration is whether the assessee concealed any part of income or furnished any inaccurate particulars of income? The fact that the payment was made to Dr. Rani Ashok is not disputed. The claim of Revenue is that Dr. Rani Ashok has not attended any patient. Since the payment was not disputed by the Revenue and Dr. Rani Ashok admittedly a medical professional, this Tribunal is of the considered opinion that it cannot be said to be a concealment of income or furnishing inaccurate particulars of income.

6. Mere payment of taxes during the assessment proceedings cannot be a reason to levy penalty. This Tribunal is of the considered opinion that penalty proceeding is different from assessment proceeding. Merely because an addition was made in the assessment proceedings that will not automatically lead to levy of penalty. This Tribunal is of the considered opinion that the Assessing Officer is bound to re-examine the material available on

record in the penalty proceeding and decide the case on the basis of material available on record. This Tribunal is of the considered opinion that so long as the payment is not in dispute and the qualification of Dr. Rani Ashok is not in dispute, the payment said to be made to Dr. Rani Ashok cannot be a reason to levy penalty. Moreover, ₹7,93,845/- was offered in the case of M/s Garuda Overseas (P.) Ltd. Therefore, there was no sufficient cause for levying penalty under Section 271(1)(c) of the Act. This Tribunal is of the considered opinion that this is not a fit case for levy of penalty. Accordingly, the orders of both the authorities below are set aside and the penalty levied by the Assessing Officer for both the assessment years is deleted.

6. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the court on 12th September, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 12th September, 2018.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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