

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 No.2382/Chny/2016

निर्धारण वर्ष / Assessment Year : 2009-10

&

आयकर अपील सं./ITA Nos.3146 & 3147/Chny/2017

निर्धारण वर्ष / Assessment Years : 2015-16

The Assistant Commissioner of
Income Tax,
Central Circle -2, Income Tax Building,
Race Course Road,
Coimbatore – 641 018.

(अपीलार्थी/Appellant)

Shri S. Martin,
v. No.335-339, Daisy Plaza,
6th Street, Gandhipuram,
Coimbatore – 641 011.

PAN : AEWPM 3703 Q

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Sailendra Mamidi, PCIT

प्रत्यर्थी की ओर से/Respondent by : Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 17.09.2018

घोषणा की तारीख/Date of Pronouncement : 05.10.2018

आदेश / O R D E R

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

All the appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals)-18, Chennai, for the assessment years 2009-10 and 2015-16.

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

2. There was a delay of 3 days in filing the appeal in I.T.A. No.2382/Chny/2016 by the Revenue. The Revenue has filed a petition for condonation of delay. We have heard the Ld. D.R. and the Ld.counsel for the assessee. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. Let's first take assessment year 2009-10 in I.T.A. No.2382/Chny/2016.

4. Shri Sailendra Mamidi, the Ld. Departmental Representative, submitted that during the course of assessment proceeding, the Assessing Officer disallowed ₹1,66,96,393/- towards insurance receipts and ₹90,86,349/- towards business expenditure. According to the Ld. D.R., the Assessing Officer also made disallowance under Section 14A of the Income-tax Act, 1961 (in short 'the Act') to the extent of ₹5,34,393/- and prepaid expenditure of ₹1,98,990/-. The Assessing Officer also disallowed interest on

the delayed payment of TDS to the extent of ₹11,687/- and capital gain to the extent of ₹47,07,30,598/-. The Assessing Officer found that the assessee surrendered his Life Insurance Policy on 31.01.2009 and received a sum of ₹3,26,73,685/-. According to the Ld. D.R., the assessee in fact, took the policy on 20.04.2005 for ₹2 Crores and paid a premium of ₹1,26,73,685/- on the same day. Therefore, according to the Ld. D.R., the Assessing Officer found that the excess amount received over and above the premium of ₹1,26,73,685/- has to be treated as income. According to the Ld. D.R., the assessee has also availed pension plus regular policy during the assessment year 2009-10. On surrender of the said policy, the assessee received an amount of ₹40,22,708/- on 11.08.2008. Since the premium paid by the assessee was claimed as deduction, according to the Ld. D.R., the amount received by the assessee on 11.08.2008 is liable for taxation. Accordingly, the Assessing Officer made an addition of ₹40,22,708/-. Similarly, according to the Ld. D.R., the assessee has claimed ₹88,81,129/- towards business expenditure. The assessee has paid ₹2,05,220/- for security services of his own residential bungalow and claimed the same as business expenditure. According to the Ld. D.R., the

Assessing Officer found that personal expenditure cannot be allowed as business expenditure.

5. Coming to addition made under Section 14A of the Act, the Ld. D.R. submitted that the assessee received dividend income of ₹71,19,981/- and claimed the same as exempt. The Assessing Officer by placing reliance on Section 14A of the Act, computed the disallowance under Rule 8D of Income-tax Rules, 1962 to the extent of ₹5,24,393/-. Moreover, according to the Ld. D.R., the interest paid on delayed payment of TDS was claimed as expenditure by the assessee which was disallowed. Since the assessee has not furnished the entire particulars of income and claimed the same as deduction, according to the Ld. D.R., the Assessing Officer found that the assessee willfully concealed and deliberately furnished inaccurate particulars of income, therefore, he rightly levied penalty under Section 271(1)(c) of the Act. According to the Ld. D.R., the CIT(Appeals) without considering the finding of the Assessing Officer with regard to capital gain, found that there was no concealment of income. The CIT(Appeals), according to the Ld. D.R., has failed to consider that the assessee purchased the

property and within a short span of time sold the same at much higher rate and earned short term capital gain. According to the Ld. D.R., this is a clear case of evasion of tax as held by the Apex Court in McDowell and Co. Ltd. v. Commercial Tax Officer (1985) 154 ITR 148, therefore, the CIT(Appeals) is not justified in allowing the claim of the assessee.

6. On the contrary, Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee is engaged in the business of lottery. According to the Ld. counsel, the Assessing Officer made additions to the total income by disallowing the claim of the assessee. The assessee has furnished the entire details with regard to insurance receipt, expenditure claim, dividend income, prepaid expenditure and short term capital gain. The Assessing Officer without appreciating the facts, made additions in the assessment proceeding. According to the Ld. counsel, penalty proceeding is different from assessment proceeding. All the additions / disallowances cannot automatically result in levy of penalty. According to the Ld. counsel, the entire transactions were placed before the Assessing Officer and the Assessing Officer after

considering the claim of the assessee found that certain claims are not allowable. It does not mean that the assessee has furnished inaccurate particulars of his income or concealed part of his income. Placing reliance on the judgment of Apex Court in CIT Vs. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158, the Ld.counsel submitted that mere claim cannot be construed as concealment of income or furnishing of inaccurate particulars of income. Having furnished all the particulars, according to the Ld. counsel, the assessee made claim bonafidely as per the provisions of Income-tax Act, therefore, there is no question of concealment of income or furnishing inaccurate particulars of income.

7. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer found that the assessee made single insurance policy for availing Life Insurance from ICICI Prudential Life Insurance Company on 20.04.2005. The sum assured was ₹2 Crores and the assessee paid full premium of ₹1,26,73,685/-. The assessee received ₹3,26,73,685/-. The Assessing Officer found that the excess amount received by the assessee over and above the

premium of ₹1,26,73,685/- was to be treated as income of the assessee. The fact remains that the assessee has disclosed the payment of insurance premium of ₹1,26,73,685/- for sum assured of ₹2 Crores and also the receipt of ₹3,26,73,685/-. Therefore, this Tribunal is of the considered opinion that there is no concealment of income or furnishing of inaccurate particulars of income. The question whether the excess amount received over and above ₹1,26,73,685/- was income of the assessee is a matter to be decided by the Assessing Officer. Therefore, this cannot be considered to be a concealment of income. The assessee apparently disclosed pension plus regular policy availed from AVIVA Life Insurance company and also the amount received on surrender of policy. Therefore, even in this case, there is no concealment of income. The entire particulars were available before the Assessing Officer.

8. Now coming to the business expenditure of ₹88,81,129/-, the Assessing Officer found that a sum of ₹2,05,220/- was paid for security services of residence of the assessee. The fact remains that the entire facts were placed before the Assessing Officer and

the assessee claimed the same as deduction. Mere claim, as rightly pointed out by the Ld.counsel, cannot be construed as concealment of income or inaccurate particulars of income. Similarly, the dividend income of ₹71,19,981/- was also disclosed by the assessee and the assessee claimed deduction as provided under Section 14A of the Act. The Assessing Officer by applying Rule 8D of Income-tax Rules, 1962 disallowed ₹5,24,393/- out of ₹71,19,981/-. When the entire facts were available before the Assessing Officer, it cannot be said that there is a concealment of income or furnishing of inaccurate particulars of income. Moreover, the interest on delayed payment of TDS was placed before the Assessing Officer and the assessee claimed deduction. It does not mean that the assessee has concealed particulars of income. Similarly, details of prepaid expenses of ₹1,98,990/- were also available before the Assessing Officer.

9. Coming to the short term capital gain, the assessee retired from partnership firm with effect from 19.08.2008 and received a lump sum compensation from partnership firm over and above the capital contribution by way of immovable property. This was

considered to be a short term capital gain. The fact remains that the assessee retired from partnership firm and received a lump sum compensation from the firm. This was disclosed before the Assessing Officer. Therefore, there is no question of any concealment of income or furnishing inaccurate particulars of income. In those circumstances, this Tribunal is of the considered opinion that the judgment of Apex Court in Reliance Petroproducts (P) Ltd. (supra) is squarely applicable to the facts of the case. Therefore, the CIT(Appeals) has rightly deleted the disallowance made by the Assessing Officer. Hence, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

10. Now coming to assessment year 2015-16 in I.T.A. No.3147/Chny/2017.

11. The only issue arises for consideration is penalty levied by the Assessing Officer under Section 271(1)(c) of the Act.

12. Shri Sailendra Mamidi, the Ld. Departmental Representative, submitted that the assessee claimed ₹2,88,22,870/- as expenditure

in the Profit & Loss account. According to the Ld. D.R., the assessee explained before the Assessing Officer that M/s Gaming & Hotel Services (P) Ltd. is a separate entity assessed to tax and he has not given any instruction to Shri Nagarajan, who is an employee of M/s Gaming & Hotel Services (P) Ltd. to make any payment. According to the Ld. D.R., this claim of the assessee was not substantiated by producing necessary evidence, therefore, the Assessing Officer disallowed the claim of the assessee. Moreover, in respect of the expenditure, the assessee has not raised any objection for making addition to the total income. Therefore, according to the Ld. D.R., the Assessing Officer found that the assessee concealed the particulars of income. Hence, according to the Ld. D.R., the Assessing Officer levied penalty under Section 271(1)(c) of the Act.

13. On the contrary, Shri S. Sridhar, the Ld.counsel for the assessee, submitted that no doubt, the assessee claimed in the Profit & Loss account expenditure to the extent of ₹2,88,22,870/-. According to the Ld. counsel, mere making claim of expenditure in the Profit & Loss account or before the Assessing Officer does not

amount to furnishing inaccurate particulars of income or concealing any part of income. According to the Ld. counsel, the assessee has furnished entire details of income earned by him. The assessee has also furnished details of expenditure and claimed the expenditure as deduction while computing the total income. Therefore, according to the Ld. counsel, the entire particulars of income and expenditure were available before the Assessing Officer. The Assessing Officer during the course of assessment proceeding, found that certain claims of the assessee as expenditure were not allowable, therefore, according to the Ld. counsel, he made the addition. Merely because the assessee has not contested the disallowance made by the Assessing Officer with regard to the claim of expenditure, according to the Ld. counsel, that will not amount to admission for disallowance, therefore, the CIT(Appeals) has rightly deleted the penalty levied by the Assessing Officer.

14. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the assessee has claimed an expenditure of

₹2,88,22,870/-., which includes a sum of ₹30,00,000/- said to be paid by one Shri Nagarajan to Shri Ramesh Krishan on so-called instruction of the assessee. The fact remains that the assessee has furnished entire details of income and also furnished entire details of the so-called expenditure. The Assessing Officer found that the assessee has not substantiated the claim of expenditure. The question arises for consideration is when the assessee claimed expenditure and the Assessing Officer disallowed the claim of the assessee on the ground that such a claim was not substantiated, whether there was any concealment of income or furnishing inaccurate particulars of income? This issue was considered by the Apex Court in the case of Reliance Petroproducts (P) Ltd. (supra). The Apex Court found that mere claim of expenditure would not amount to furnishing of inaccurate particulars of income or concealing any part of income. In view of the above, this Tribunal has no hesitation to confirm the order of the CIT(Appeals). Accordingly, the order of the CIT(Appeals) is confirmed.

15. Now coming to I.T.A. No.3146/Chny/2017 for assessment year 2015-16.

16. The only issue arises for consideration is penalty levied by the Assessing Officer under Section 271AAB of the Act.

17. Shri Sailendra Mamidi, the Ld. Departmental Representative, submitted that there was search conducted in the premise of the assessee on 13.01.2015. According to the Ld. D.R., the assessee admitted an additional income of ₹50 Crores under the head "Income from Other Sources". The assessee also filed return of income on 28.09.2015 declaring total income of ₹234,17,62,510/-. This includes the admission of ₹50 Crores under the head "Income from Other Sources". However, according to the Ld. D.R., the Assessing Officer determined the total income at ₹2,37,05,85,380/-. The Assessing Officer initiated penalty proceeding under Section 271AAB of the Act. Referring to Section 271AAB of the Act, the Ld. D.R. submitted that the Assessing Officer may levy penalty if the assessee admits in the course of search proceeding the undisclosed income and specifies the manner in which such income was derived. In this case, according to the Ld. D.R., the assessee admitted undisclosed income during the course of search operation,

therefore, the Assessing Officer has rightly levied penalty under Section 271AAB of the Act.

18. On the contrary, Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee offered an additional income of ₹50 Crores during the course of search operation, for assessment. According to the Ld. counsel, the assessee has not specified the manner in which such undisclosed income was derived. Moreover, referring to Sections 153A and 153C of the Act, the Ld.counsel submitted that undisclosed income shall be with reference to material found during the course of search operation and the information which is relatable to the material found during the course of search operation. In this case, according to the Ld. counsel, no material was found during the course of search operation. Therefore, what was offered by the assessee as additional income cannot be construed as undisclosed income. Hence, the provisions of Section 271AAB of the Act is not applicable at all. Therefore, according to the Ld. counsel, the CIT(Appeals) has rightly deleted the penalty levied by the Assessing Officer.

19. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, there was search operation in the premises of the assessee on 13.01.2015. In the course of search operation, the assessee offered an additional income of ₹50 Crores under the head "Income from Other Sources". The Assessing Officer levied penalty under Section 271AAB of the Act in respect of the additional income offered by the assessee. It is not the case of the Revenue that any incriminating material was found during the course of search operation with regard to income offered by the assessee. The term "undisclosed income" is not defined in Section 271AAB of the Act, but it is defined in Section 158B(b) of the Act. Section 158B(b) of the Act reads as follows:-

"158B(b) "undisclosed income" includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act [or any expense, deduction or allowance claimed under this Act which is found to be false]."

20. This is the only definition available for “undisclosed income” in the Income-tax Act, 1961. Therefore, on the basis of material found during the course of search operation, if the Assessing Officer comes to a conclusion that the material found represents wholly or partly of the assessee’s income, which would not have been disclosed but for the purpose of search, may be construed as undisclosed income. In this case, it is not the case of the Revenue that any incriminating or other material was found during the course of search operation which represents wholly or partly the undisclosed income of the assessee. It is a definite case of the Revenue that the assessee offered an additional income of ₹50 Crores. Therefore, offer made by the assessee is not admitted on the basis of any material or document, bullion, etc. Therefore, as rightly found by the CIT(Appeals), this cannot be construed as undisclosed income for the purpose of levy of penalty under Section 271AAB of the Act. Hence, the CIT(Appeals) has rightly deleted the penalty levied by the Assessing Officer. This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

21. In the result, all the three appeals filed by the Revenue are dismissed.

Order pronounced in the court on 5th October, 2018 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 5th October, 2018.

Kri.

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.