

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 No.722/Chny/2018

निर्धारण वर्ष / Assessment Year : 2009-10

Shri K. Velavan,  
8/9, T.M.S. Nagar, Keel Thindal,  
Thindal Post, Erode – 638 012.

v. The Assistant Commissioner of  
Income Tax,  
Circle – 1, Income Tax Office,  
Gandhi Road, Erode – 638 001

PAN : ACNPV 2715 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Ms. S. Vijayaprabha, JCIT

सुनवाई की तारीख/Date of Hearing : 27.09.2018

घोषणा की तारीख/Date of Pronouncement : 05.10.2018

### **आदेश /O R D E R**

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -3, Coimbatore, dated 05.02.2018 and pertaining to assessment year 2009-10.

2. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the Assessing Officer levied penalty under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') by an order dated 27.03.2014. In fact, the penalty was levied in respect of the so-called unexplained investment to the extent of ₹10 lakhs and the so-called unapproved loan amount of ₹8 lakhs. According to the Ld. counsel, this Tribunal in the quantum appeal in I.T.A. No.353/Mds/2014 dated 20.06.2014, deleted the addition of ₹8 lakhs with regard to unapproved loan amount. This Tribunal found that the Assessing Officer levied penalty on the basis of sworn statement said to be recorded under Section 131 of the Act. According to the Ld. counsel, in the first round of litigation, wherein the Assessing Officer levied penalty under Section 271(1)(c) of the Act, this Tribunal by an order dated 15.07.2016 in I.T.A. No.1212/Mds/2016 remitted back the matter to the file of the Assessing Officer. This Tribunal while remitting back, observed that addition of ₹10 lakhs and ₹8 lakhs cannot stand simultaneously and by applying principles of telescoping, this Tribunal sustained the addition of ₹10 lakhs only. The profit on sale of medicine was confirmed at 20%. According to the Ld. counsel, the order passed by the Tribunal in quantum appeal was not considered and the

Assessing Officer levied penalty. Therefore, this Tribunal in its order dated 15.07.2016, found that the Assessing Officer levied penalty by an order dated 27.03.2014 while the Tribunal granted relief in the quantum appeal on 20.06.2014, much after the levy of penalty. Therefore, according to the Ld. counsel, the matter was remitted back to the file of the Assessing Officer with the direction to reconsider the matter afresh and thereafter decide the same.

3. Shri S. Sridhar, the Ld.counsel for the assessee, further submitted that while reconsidering the matter, the Assessing Officer has not re-appreciated the material available on record. He has simply taken the penalty levied in the original proceeding and reduced the penalty relating to the quantum relief granted by this Tribunal and sustained the balance. According to the Ld. counsel, the addition with regard to unexplained investment on the land was only to the extent of ₹10 lakhs in the quantum addition. This was on the basis of statement recorded under Section 131 of the Act and there was no substantive material to disallow the claim of the assessee. Moreover, according to the Ld. counsel, the profit on sale of medicine was also made only on estimate basis. The CIT(Appeals) simply found that the direction of this Tribunal to

reconsider the matter afresh was not carried on by the Assessing Officer. Therefore, according to the Ld. counsel, the CIT(Appeals) directed the Assessing Officer to pass an order as per the direction given by the Tribunal. The fact remains that the Assessing Officer has not re-appreciated the material available on record. Therefore, according to the Ld. counsel, the CIT(Appeals) ought to have deleted the penalty instead of directing the Assessing Officer to pass an order once again.

4. On the contrary, Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that the CIT(Appeals), in fact, allowed the appeal of the assessee directing the Assessing Officer to pass an order as per the direction of ITAT. According to the Ld. D.R., the assessee has no grievance at all since the CIT(Appeals) has allowed the appeal of the assessee.

5. We have considered the rival submissions on either side and perused the relevant material available on record. In the quantum appeal, this Tribunal granted partial relief. In the first round of litigation, on the penalty proceeding, this Tribunal found that the penalty order was passed before the order passed by this Tribunal in the quantum appeal, therefore, this Tribunal directed the

Assessing Officer to reconsider the matter afresh. The Assessing Officer simply has taken the penalty levied in the original proceeding and the penalty relating to the relief granted by this Tribunal and sustained the remaining balance. As rightly submitted by the Ld.counsel for the assessee and the Ld. D.R., the Assessing Officer has not re-appreciated the material available on record as directed by this Tribunal. In the normal process, this Tribunal would have remitted back the matter to the Assessing Officer to reconsider the issue once again. However, we are not doing so in this appeal since the penalty levied by the Assessing Officer is only ₹5,84,842/-. Therefore, we consider the case on merit.

6. The ultimate addition sustained by this Tribunal is only ₹10 lakhs and the profit on sale of medicine was at 20%. It is well settled principles of law that all the additions do not automatically result in levy of penalty. When the assessee claims that the investment in the land was made from the borrowed funds and merely because the assessee could not substantiate the borrowal of funds by producing the substantial material before the Assessing Officer, that does not mean that the assessee has concealed the particulars of income or furnished inaccurate particulars of income.

In the absence of any material to show that the assessee has concealed any particulars of income or furnished inaccurate particulars of income, this Tribunal is of the considered opinion that the levy of penalty is not called for.

7. Mere claim of expenditure or the claim that the assessee has borrowed loan cannot automatically result in levy of penalty. In the absence of any material to show that the assessee has earned money or income and concealed the same in the return of income, this Tribunal is of the considered opinion that the penalty cannot be levied. Moreover, the profit on sale of medicine was taken at 20%. In these facts, this Tribunal is of the considered opinion that this is not a fit case for levy of penalty. Therefore, this Tribunal is unable to uphold the orders of both the authorities below. Accordingly, the orders of both the authorities below are set aside and the Assessing Officer is directed to delete the penalty levied under Section 271(1)(c) of the Act.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 5<sup>th</sup> 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 5<sup>th</sup> October, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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