

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' 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.388 & 389/Chny/2018

निर्धारण वर्ष / Assessment Year : 2007-08 & 2011-12

Shri S.P. Ganesan,  
No.1, Millers Road, Kilpauk,  
Chennai - 600 010.

v. The Assistant Commissioner of  
Income Tax,  
Non-Corporate Circle – 10(1),  
Chennai - 600 034.

PAN : AADPG 3113 F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri C. Subramanian, CA

प्रत्यर्थी की ओर से/Respondent by : Shri Guru Bashyam, JCIT

सुनवाई की तारीख/Date of Hearing : 07.11.2018

घोषणा की तारीख/Date of Pronouncement : 16.11.2018

### **आदेश /ORDER**

**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) - 12, Chennai, dated 27.11.2017 and pertain to assessment years 2007-08 and 2011-12, confirming the penalty levied by the Assessing Officer under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). Since common issue arises for

consideration in both the appeals, we heard these appeals together and disposing of the same by this common order.

2. Shri C. Subramanian, the Ld. representative for the assessee, submitted that the assessee is a medical practitioner by profession. During the assessment years under consideration, according to the Ld. representative, the assessee claimed set off of losses in share trading against the professional income. The Assessing Officer, however, found that the transactions of purchase and sale of shares are speculative transactions without taking delivery of scrips. According to the Ld. representative, the assessee has furnished details of the transactions of sale and purchase of shares including trading in futures and options. The assessee set off losses suffered in the share trading against other income and offered the net income for taxation. Mere claim of set off of losses while filing the return of income, according to the Ld. representative, cannot be construed to be either furnishing inaccurate particulars or concealing any part of income. Therefore, according to the Ld. representative, the CIT(Appeals) is not justified in confirming the orders of the Assessing Officer.

3. On the contrary, Shri Guru Bashyam, the Ld. Departmental Representative, submitted that the assessee is engaged in speculative business in trading in futures and options through broker M/s Shreyas Stock Pvt. Ltd. According to the Ld. D.R., the assessee deliberately filed the return of income claiming set off of losses suffered in share trading against income from other source, therefore, the assessee has furnished inaccurate particulars of income. Since the assessee has furnished inaccurate particulars of income with regard to nature of share trading transactions, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the orders of the Assessing Officer. On a query from the Bench, the Ld. D.R. clarified that the assessee has furnished the entire details of share trading transactions including futures and options and claimed set off, therefore, the assessee has furnished inaccurate particulars of income.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee apart from being a medical practitioner, is also engaged in share trading. The assessee admittedly suffered losses and set off those losses suffered in trading in shares against other income. The

Assessing Officer, however, disallowed the claim of the assessee on the ground that the transactions in purchase and sale of shares are speculative transactions, therefore, it cannot be set off. The question now arises for consideration is whether making of claim, namely, set off of losses suffered in share trading amounts to furnishing of inaccurate particulars of income or not?

5. We have carefully gone through the provisions of Section 271(1)(c) of the Act which reads as follows:-

**S.271. Failure to furnish returns, comply with notices, concealment of income, etc.** - (1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—

(b) .....

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or

he may direct that such person shall pay by way of penalty,--

(ii) in the cases referred to in clause (b), in addition to tax, if any, payable by him, a sum of ten thousand rupees for each such failure ;

(iii) in the cases referred to in clause (c) or clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits.

6. The Assessing Officer may levy penalty if he is satisfied that the assessee has concealed particulars of income or furnished inaccurate particulars of such income. In this case, admittedly, the assessee has furnished the entire transaction details before the Assessing Officer. The assessee claims that the loss suffered in share trading has to be set off against the other income. It is not the case of the Revenue that the assessee has concealed any part of income. The claim of the Ld. D.R. is that making the claim of set off in respect of losses suffered in share trading amounts to furnishing inaccurate particulars of income.

7. The question arises for consideration is whether mere making a claim for set off of losses in share trading amounts to furnishing of inaccurate particulars of income? This issue was considered by the Apex Court in CIT Vs. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158. The Apex Court found that after furnishing entire details, making a claim in the return of income does not amount to furnishing inaccurate particulars or concealing any part of income. This Tribunal is of the considered opinion that if the assessee makes a claim after furnishing entire details, it is his personal opinion with regard to income-tax. There may be

difference of opinion with regard to nature of transactions by the assessee at one end and opinion of Department at other end. This difference of opinion with regard to nature of transaction cannot be construed as furnishing inaccurate particulars of income as found by the Apex Court in Reliance Petroproducts (P) Ltd. (supra). In view of the above we are unable to uphold the orders of the authorities below. Accordingly, the orders of both the authorities below are set aside and penalty levied by the assessee for both the assessment years are deleted.

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

Order pronounced in the court on 16<sup>th</sup> November, 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 16<sup>th</sup> November, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-12, Chennai
4. Principal CIT-3, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.