

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'D' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.6/CHNY/2018
(निर्धारण वर्ष / Assessment Year: 2013-14)

Shri Kondalapudi Narasa Reddy, No.230, J.J. Road, Alwarpet, Chennai – 600 018.	Vs	The Asst. Commissioner of Income Tax, Corporate Circle – 4(2), Chennai.
PAN: AADPR0461M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by	:	Shri R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri Srinivasa Rao, CIT

सुनवाई की तारीख/Date of hearing	:	18.09.2018
घोषणा की तारीख/Date of Pronouncement	:	16.11.2018

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

This appeal by the assessee is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-8, Chennai dated 03.11.2018 in ITA No.236/16-17 for the assessment year 2013-14 passed U/s.250(6) r.w.s. 271(1)(c) of the Act.

2. The assessee has raised several grounds in his appeal however the crux of the issue is that the Ld.CIT(A) has erred in partly sustaining the penalty to the extent of Rs.8,50,000/- U/s. 271(1)(c) of the Act.

3. The brief facts of the case are that the assessee is an individual earning income from salary and income from other sources, filed his return of income for the assessment year 2013-14 on 30.09.2013 admitting total income of Rs.35,32,940/-.The case was selected for scrutiny and notice U/s.143(2) of the Act was issued on 30.09.2014. Finally assessment order was passed U/s.143(3) of the Act on 23.03.2016 wherein the Ld.AO assessed the income of the assessee at Rs.59,52,592/- by disallowing the expenditure of Rs.24,19,652/-. Thereafter the Ld.AO had initiated the penalty proceedings U/s. 271(1)(c) of the Act and levied maximum penalty of Rs.10,00,000/- which is more than 100% of the tax sought to be evaded by stating that the assessee had furnished inaccurate particulars relating to the expenditure. On appeal the Ld.CIT(A) agreeing with the view of the Ld.AO partly sustained the penalty at Rs.8,50,000/-.

4. Before us the Ld.AR submitted that the assessee had claimed expenditure on the bonafide belief that it was allowable deduction as per the provisions of the law. However when the Ld.AO had disallowed

the expenditure claimed as deduction, the assessee accepted the decision of the Ld.AO. He further submitted that the assessee had revealed all the relevant facts before the Ld.AO and there was no concealment of income. It was therefore pleaded that the penalty levied and sustained by the Ld.Revenue Authorities may be deleted. The Ld.DR on the other hand argued in support of the order of the Ld.AO.

5. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case it is apparent that the assessee had revealed the entire facts before the Revenue but has only claimed deduction towards expenditure which he genuinely thought to be allowable as deduction. At this juncture we are reminded of the decision of the Hon'ble Apex Court in the case CIT vs. Reliance Petroproducts Pvt. Ltd., reported in 322 ITR 158 wherein it was held as follows:-

“A glance at the provisions of Section 271(1)(c) of the IT Act, 1961, suggest that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word ‘particulars’ used in Section 271(1)(c) would embrace the meaning of the details of the claim made. Where no information given in the return is found to be correct or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. To attract penalty the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous. _____

A mere making of a claim which is not sustainable in law, be itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars.”

In the case of the assessee also, it is only an incorrect claim of deduction and that would not amount to furnishing of incorrect particulars with respect to the income of the assessee. Therefore following the decision of the Hon'ble Apex Court cited herein above, we hereby direct the Ld.AO to delete the penalty levied on the assessee invoking the provisions of Section 271(1)(c) of the Act.

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

Order pronounced on the 16th November, 2018 at Chennai.

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

Sd/-

(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 16th November, 2018

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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