

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष  
एवं ए. मोहन अलंकामणी, लेखा सदस्य

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER & SHRI  
A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.1876/Chny/2017

निर्धारण वर्ष /Assessment year : 2012-13

**Mr.V.K.C.Jayamohan,**  
81/40,Kutchery Road,  
Mylapore, Chennai 600 004.

**Vs.** Assistant Commissioner of  
Income Tax,  
Non corporate circle-1,  
Chennai-600 034.

**[PAN ADAPJ 2642 Q]**  
**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Mr.S.Sendamarai Kannan,  
Advocate  
प्रत्यर्थी की ओर से /Respondent by : Mr.V.Sreehdhar,JCIT,D.R  
सुनवाई की तारीख/Date of Hearing : 24-12-2018  
घोषणा की तारीख /Date of Pronouncement : 01-01-2019

**आदेश / ORDER**

**PER GEORGE MATHAN, JUDICIAL MEMBER**

This is an appeal filed by the assessee against the order of the Commissioner of Income-tax (Appeals)-2, Chennai in ITA No.158/CIT(A)-2/2015-16 dated 29.05.2017 for the assessment year

2012-13 confirming the levy of penalty u/s.271(1)(C) of the Income Tax Act,1961 (in short 'the Act' ) made by Id. Assessing Officer.

2. Mr.S.Sendamarai Kannan represented on behalf of the Assessee and Mr.V.Sreehdhar represented on behalf of the Revenue.

3. It was submitted by Id.A.R that assessee is an individual, who is doing the business of construction. It was a submission that assessee had undertaken construction of four residential projects during the assessment year under consideration. It was a submission that the assessee was following the Completed Contract Method.

3.1 It was a submission that the assessee had claimed the expenditure in respect of the four projects named as (i) 'Skylab Avenue for constructing 6 flats, which is a joint venture, (ii) 'Blue Nile Project' with 12 flats, 'sunglow project' with 10 flats and 'Clairville Project' with 10 flats which are constructed on the land belonging to the assessee. It was a further submission that the total expenditure claimed was nearly ₹2.35 crores. It was a submission that in the course of assessment, the Id. Assessing Officer held that the assessee is following the Project Completion Method and consequently the expenditure claimed by assessee was liable to be added. It was a submission that subsequently the assessee had submitted a revised return dated 20.03.2015/ P&L Account by admitting the closing work-

in-progress of each project, which was not taken in his original return dated 27.02.2015 and assured to pay the necessary taxes. Consequently, the Id. Assessing Officer had shifted the same from expenses to Work-in-progress. It was a submission that the assessee had accepted the assessment. It was a submission that the genuineness of the expenses had not been disputed by the Id. Assessing Officer. It was a submission that in the immediately succeeding assessment year when the projects were completed, the expenditure in entirety has been allowed in so far as the assessee has filed revised returns for claiming the said expenditure in the subsequent assessment years. It was a submission that there is no concealment of income nor furnishing of inaccurate particulars of income. It was a submission that assessee had earned the interest to an extent of ₹27,832/- and the same was omitted to be offered by oversight and shown in the capital account. Consequently, it had not been offered to tax. It was a submission that it is only a clerical mistake and the same has now been offered and tax paid thereon. The Id.A.R also placed before us a copy of reply given by the assessee in respect of penalty notice which is shown at pages 104 to 105 & 106-107 of paper book, which reads as follows:-

“V.K.C. JAVAMOHAN,

81/40w Kutcheey Road,  
Myapore, Chennai - 600 004.

April 15, 2015

The Asst. Commissioner of Income Tax, Non-Corporate Circle I, Chennai.

Respected Sir,

Ref: My own/PAN No.ADA PJ 2642 Q A.Y, 2012-13.

Sub: Reply to Notice u/s 274 read with sec 271 (c) Of the Income tax Act 1961-Reg.

With reference to the above I wish to submit the following for your consideration.

I have not willfully concealed the particulars of Income. Or furnished inaccurate particulars of Income etc., for the above said Assessment Year.

I believed that my accountant has done the accounting works properly. Due to her (i.e accounts) ill health she has finished the accounting work during the closing date to file the return and my auditors have also verified the accounts at the last time and certain errors were not been noticed by them also.

I have started the Flat Construction business during the period. Due to Inexperience of my accountant she has not brought the working progress in the profit and loss account. She has debited all the expenditure and credited the Sales made during the year to the profit and loss account and that is the reason for the low profit.

As soon as the department noticed the low profit I voluntary accepted my error (i.e. not considered the working progress) and revise the Statement of Total Income by incorporating the working progress etc and accepted to pay the necessary taxes including interest whichever is applicable.

The other disallowance Is provisions of payments to contracts without TDS etc., In his regard I wish to say that the provisions were made during the month of March and the actual payments were made subsequent financial year and at the time of payments made the necessary TDS were made

I have honestly admitted the mistake and accepted the addition with the view to aim the expenditure in the subsequent assessment year.

The last disallowance is the Bank Interest Rs. 27,832/- by oversight this was omitted by me.

Hence I wish to bring to your notice that all the mistakes were happened due to ignorance but not a will full one. I have been co-operating with the department in the matters of filing the returns and paying the taxes in time.

Hence I humbly request you to consider the circumstances and drop the proposed penal proceedings.

I assure that I will not do such errors subsequently.

Kindly do the needful.  
Thanking you.

Yours faithfully,  
Sd/-

(V.K.C. JAYAMOHAN

V.K.C. JAVAMOHAN, 81/40w Kutcheey Road,  
Myapore, Chennai - 600 004.

April 23, 2015

The Asst. Commissioner of Income Tax, Non-Corporate Circle I, Chennai.

Respected Sir,  
Ref: My own/PAN No.ADA PJ 2642 Q A.Y, 2012-13.

Sub: Reply to Notice u/s 274 read with sec 271 (c) Of the Income tax Act 1961-Reg.

With reference to the above I wish to submit the following for your consideration.

I have not willfully concealed the particulars of Income. Or furnished inaccurate particulars of Income etc., for the above said Assessment Year.

I believed that my accountant has done the accounting works properly. Due to her (i.e accounts) ill health she has finished the accounting work during the closing date to file the return and my auditors have also verified the accounts at the last time and certain errors were escaped the attention of auditors due to paucity of time..

I have started the Flat Construction business during the period. Due to Inexperience of my accountant she has not brought the working progress in the profit and loss account. She has debited all the expenditure and credited the Sales made during the year to the profit and loss account and that is the reason for the low profit.

As soon as the department noticed the low profit I voluntary accepted my error (i.e. not considered the working progress) and revise the Statement of Total Income by incorporating the working progress etc and accepted to pay the necessary taxes including interest whichever is applicable.

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Hence I humbly request you to consider the circumstances and drop the proposed penal proceedings.

I assure that I will not do such errors subsequently.

Kindly do the needful.  
Thanking you.

Yours faithfully,  
Sd/-

(V.K.C. JAYAMOHAN”

It was a submission that there was neither concealment of income nor furnishing of inaccurate particulars of income. It was a submission that the Id. Assessing Officer has also not rejected the explanation given by the assessee. It was a submission that the penalty was not leviable in the instant case in view of the principles laid down by Hon'ble Supreme Court in the case of Ashok Pai (T) Vs. CIT (2007) 292 ITR 11(SC) wherein it has been held that "*It is not a case where penalty has been imposed for breach or contravention of a commercial statute where lack of intention to contravene or existence of bona fides may not be of much importance. It is also not a case where penalty is mandatorily imposable. It was, therefore, not a case where the enabling provision should have been invoked*". The Id.A.R also placed reliance in the decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products P. Ltd., in [2010] 322 ITR 158(SC) wherein it has been held that:

*"9. Therefore, it is obvious that it must be shown that the conditions under section 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. In Dilip N. Shroff v. Joint CIT [2007] 6 SCC 329\*\*\*\*, this court explained the terms "concealment of income" and "furnishing inaccurate particulars". The court went on to hold therein that in*

*order to attract the penalty under section 271(1)(c), mens rea was necessary, as according to the court, the word "inaccurate" signified a deliberate act or omission on behalf of the assessee. It went on to hold that clause (iii) of section 271(1)(c) provided for a discretionary jurisdiction upon the assessing authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held that the Assessing Officer must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his*

*\* [2009] 317 ITR 1 (SC). \*\* [2008]306 ITR 277(SC). \*\*\* [2010] 1 GSTR 66 (SC). \*\*\*\* [2007] 291 ITR 519 (SC).*

*income were not disclosed by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in Dilip N. Shroff v. Joint CIT\* was upset. In Union of India v. Dharamendra Textile Processors\*\*, after quoting from section 271 extensively and also considering section 271(1)(c), the court came to the conclusion that since section 271(1)(c) indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing return, there was no necessity of mens rea. The court went on to hold that the objective behind the enactment of section 271(1)(c) read with Explanations indicated with*

*the said section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, wilful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under section 276C of the Act. The basic reason why decision in Dilip N. Shroff v. Joint CIT was overruled by this court in Union of India v. Dharamendra Textile Processors<sup>2</sup>, was that according to this court the effect and difference between section 271(1)(c) and section 276C of the Act was lost sight of in the case of Dilip N. Shroff v. Joint CIT<sup>1</sup>. However, it must be pointed out that in Union of India v. Dharamendra Textile Processors<sup>\*\*</sup>, no fault was found with the reasoning in the decision in Dilip N. Shroff v. Joint CIT<sup>\*</sup>, where the court explained the meaning of the terms "conceal" and "inaccurate". It was only the ultimate inference in Dilip N. Shroff v. Joint CIT<sup>1</sup> to the effect that mens rea was an essential ingredient for the penalty under section 271(1)(c) that the decision in Dilip N. Shroff v. Joint CIT<sup>\*</sup> was overruled.*

*10. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as :*

*"not accurate, not exact or correct ; not according to truth ; erroneous ; as an inaccurate statement, copy or transcript."*

It was a prayer that the levy of penalty u/s.271(1)(c) of the Act may be cancelled.

4. In reply, the Id.D.R vehemently supported the orders of the Id. Assessing Officer and the Ld.CIT(A).

5. We have considered the rival submissions. Admittedly in the present case, a perusal of the assessment order clearly shows that there is allegation that the assessee has willfully concealed particular of income. In fact, the disallowance clearly is one in respect of the amount of ₹2,35,56,441/-, which is the claim of expenditure incurred, but it has been moved to work in progress and it has been allowed as expenditure in the immediately succeeding year. The genuineness of the expenses have not been questioned nor disputed. The second issue is in regard to current liabilities in the balance sheet in respect of which the TDS has not been deducted, but TDS deducted in the succeeding year and the payment has been done. Therefore, we cannot say 'concealment of income on this TDS. In respect of addition of ₹27,832/-, it is noticed that the assessee has shown it in its capital account and the assessee has also categorically pointed out in his reply that the mistake was caused on account of the Accountant. Even considering the fact, the assessee has such a large turnover it would be difficult even to assume that the assessee would attempt to conceal or avoid payment of tax on interest income as ₹27,832/-. Also the explanation given by the assessee has not been found to be false nor has the explanation be disputed. This being so, in view of the principles laid down in the decisions of the Hon'ble Supreme Court in the cases of Ashok Pai (T) Vs. CIT (2007) 292 ITR 11(SC) and CIT vs.

Reliance Petro Products P. Ltd., in [2010] 322 ITR 158(SC) extracted supra, we are of the view that it cannot be said that there is concealment of income or furnishing of inaccurate particulars of income, which can give cause for levy of penalty u/s.271(1)(c) of the Act. This being so, the penalty as levied by the Id. Assessing Officer and confirmed by the Ld.CIT(A) in respect penalty levied u/s.271(1)(c) of the Act stands cancelled.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 01 January, 2019, at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A.MOHAN ALANKAMONY)

**लेखा सदस्य /ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 01 January, 2019.

**K S Sundaram**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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