

आयकर अपीलुीय अधलकरण, 'सी' नुयायपीठ, चेन्नई।
THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

शुी ऑर्ज माथन, नुयायलक सदसुय एवं
शुी इंतूरी रामा राव, लेखा सदसुय के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

In ITA No. 3051/Chny/2018

नुर्धारण वरुष / Assessment Year : 2009-10

Shri. T. Nallathambi,
9/12, Rajiv Nagar First Main Road,
Pallikupam,
Vanagaram,
Chennai – 600 077

Vs. Income Tax Officer,
Non-Corporate Ward 9(1),
Chennai 600 034.

[**PAN:ADAPN 0316 P**]

(अपीलार्थी/**Appellant**)

(प्रतुयर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by
प्रतुयर्थी की ओर से /Respondent by

: Mrs.Lakshmi,C.A
: Mr.R.Clement Ramesh
Kumar, Addl. C.I.T, D.R

सुनवाई की तारीख/Date of Hearing

: 25.07.2019

घोषणा की तारीख /Date of Pronouncement

: 29.07.2019

आदेश / O R D E R

PER INTURI RAMA RAO, ACCOUNTANT MEMBER:

This is an appeal filed by the Assessee directed against the Order of the Commissioner of Income Tax (Appeals)-12, Chennai ('CIT(A)' for short) dated 25.09.2018 for the Assessment Year 2009-10 confirming the

penalty levied u/s. 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act').

2. The assessee raised the following grounds.

"1. The order of the Commissioner of Income Tax (Appeals), confirming the levy a penalty of Rs.1,08,432/- under section 271(1)(c) is against the facts and circumstances of the case, law and the principles of equity and nature justice.

2. The CIT(A) erred in holding that the addition of Rs.5,10,000/- made by the CIT(A) during the course of appellate proceedings of quantum appeal, is the same addition as made by the assessing officer. The CIT(A) failed to note that the new addition was made by CIT(A) during the appellate proceedings of quantum appeal. The assessing officer cannot levy penalty on such addition. The CIT(A) erred in confirming the penalty.

3. The assessing officer and CIT(A) erred in concluding that the assessee had concealed particulars of income or furnished inaccurate particulars of income. The assessing officer failed to appreciate that the assessee had given complete details in respect of additions made by him and he has also recorded satisfaction of the same in his remand report.

4. The assessing officer and CIT(A) failed to appreciate that the addition in respect of gain on sale of properties was a new source of income, for which the assessment was made by the CIT (A) during the appellate proceedings for the quantum appeal. The assessing officer cannot levy penalty in respect of addition made by the CIT(A). The CIT(A) thus erred in upholding the order of the assessing officer.

5. The CIT(A) failed to appreciate that the assessing officer cannot be satisfied on additions made by the CIT(A), hence the levy of penalty is bad in law.

6. The notice issued by the assessing officer did not specify whether the penalty is proposed to be levied for the assessee having concealed the particulars of income or for furnishing inaccurate particulars of income. In view of vagueness in the notice, the penalty levied is bad in law.

7. Even in the order under section 271 (1) (c), the assessing officer is not clear of whether the charge on the assessee is for concealment of particulars of income or furnishing inaccurate particulars of income. In view of the same, the penalty order is bad in law.

8. The CIT(A) failed to appreciate that the penalty is bad in law since charge for levy of penalty is not brought out clearly.

9. The CIT(A) erred in holding that the penalty is for concealment of income. He failed to appreciate that such charge must be brought out by the assessing officer before the levy of penalty.

10. The appellant craves the leave of the Hon'ble Tribunal to adduce additional grounds in support its contentions before and during the course of hearing of this appeal.

3. The brief facts of the case are that the Appellant-assessee namely Shri T.Nallathambi, is an individual and employed in Integral Coach Factory, Chennai. The return of income for the assessment year 2009-10 was filed on 17.07.2009 declaring total income of Rs.1,61,370/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Non Corporate ward 19(1), Chennai (hereinafter referred as 'AO') vide order dated 29.12.2011 passed u/s.143(3) of the Income Tax Act, 1961 (in short 'the Act') at total income of Rs.58,13,070/- after making certain additions. The disparity between returned income is on account of additions on account of i) unexplained investments u/s.69 of the Act at Rs.3,48,000/-, ii) unexplained cash credit u/s.68 of the Act at Rs.31,65,300/-, iii) Unexplained investments in plot at Rs.3,63,400/-, iv) income from other sources u/s.56(2) of the Act at Rs.17,75,000/-. Assessing Officer initiated penalty proceedings u/s.271(1)(c) of the Act vide show cause notice u/s.274 of the Act dated 29.12.2011. Being aggrieved by additions made by Assessing Officer, the assessee preferred an appeal before the Id.CIT(A), who vide his order in ITA No.279/C.I.T(A)-12/2013-14 dated 28.03.2017, have granted relief to an extent of

Rs.51,41,700/- and sustained the addition of Rs.5,10,000/-. Meanwhile, the Assessing Officer had proceeded with levy of penalty at Rs.1,08,432/- us.271(1)(c) of the Act vide order dated 13.10.2017.

3.1 Being aggrieved on levy of penalty, the assessee preferred an appeal before the Id.CIT(A), who vide impugned order confirmed the levy of penalty. Being aggrieved with the order of the Id.CIT(A), the assessee is before us in the present appeal.

4. We find from the perusal of order of penalty that out of total addition of Rs.58,13,070/-, only a sum of Rs.5,10,000/- came to be sustained by the Id.CIT(A). It is admitted before the Id.CIT(A) by the assessee that he earned profit of Rs.5,10,000/- from the sale of property, which was explained for the source of cash deposit. The Id.CIT(A) had sustained the addition to an extent of Rs.5,10,000/- not returned by the assessee, but however from the facts emerging from the proceedings of Id.CIT(A), it is clear that it is based on the admission of the assessee himself, that addition was sustained. Therefore, it cannot be said it is case of concealment of furnishing of incorrect particulars of income. Merely because an addition is made, it does not entail levy of penalty and is not a fit case to levy of penalty. Accordingly, we direct the Assessing Officer to delete the penalty of Rs.5,10,000/-.

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

Order pronounced on the 29th day of July, 2019 in Chennai.

Sd/-
(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 29th July, 2019.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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