

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस. जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1261/Chny/2018

निर्धारण वर्ष /Assessment Year : 2013-14

Shri Arief Nagoor Arief,
No.24, New No.32, Venkata Iyer
Street, 2nd floor, Mannadi,
Chennai - 600 001.

v. The Deputy Commissioner of
Income Tax,
Non-Corporate Circle – 11,
Chennai – 600 006.

PAN : ADAPA 9508 Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri T. Vasudevan, Advocate

प्रत्यर्थी की ओर से / Respondent by : Dr. S. Pandian, JCIT

सुनवाई की तारीख / Date of Hearing : 25.07.2019

घोषणा की तारीख / Date of Pronouncement : 01.08.2019

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) -13, Chennai, dated 02.02.2018, confirming the penalty levied by the Assessing Officer under Section 271D of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2013-14.

2. Shri T. Vasudevan, the Ld.counsel for the assessee, submitted that in the quantum addition made by the Assessing Officer under Section 68 of the Act, this Tribunal remitted back the matter to the file of the Assessing Officer for reconsideration. According to the Ld. counsel, when the Assessing Officer disbelieved the claim of the assessee that funds were received from various persons and addition was made under Section 68 of the Act treating the same as the assessee's own money, the provisions of Section 269SS of the Act cannot be applied consequentially. Therefore, according to the Ld. counsel, there cannot be any levy of penalty under Section 271D of the Act. Moreover, this Tribunal set aside the orders of the authorities below in the quantum appeal and remitted back the matter to the file of the Assessing Officer for reconsideration. Therefore, according to the Ld. counsel, at this stage, it cannot be said that there was violation of Section 269SS of the Act which warrants levy of penalty under Section 271D of the Act.

3. We heard Dr. S. Pandian, the Ld. Departmental Representative also. It is not in dispute that the Assessing Officer made disallowance under Section 68 of the Act treating the funds said to be received by the assessee from others as the assessee's own funds and also levied penalty under Section 271D of the Act. The assessee now claims that this Tribunal remitted back the matter to the file of the Assessing Officer

for reconsideration with regard to quantum addition under Section 68 of the Act. In those factual circumstances, this Tribunal is of the considered opinion that the levy of penalty under Section 271D of the Act needs to be re-examined. Accordingly, orders of both the authorities below are set aside and the issue of levy of penalty under Section 271D of the Act is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter in the light of the material that may be filed by the assessee and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 1st August, 2019 at Chennai.

sd/-

(एस. जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 1st August, 2019.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)- 13, Chennai
4. Principal CIT- 8, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.