

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री इंटूरी रामा राव, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.855, 856 & 857/Chny/2018

निर्धारण वर्ष /Assessment Year : 2006-07

M/s Prince Builders,
New No.20, Old No.17/2,
Kutchery Lane, Mylapore,
Chennai - 600 004.

v. The Assistant Commissioner of
Income Tax,
Non-Corporate Circle – 2,
Chennai - 600 034.

PAN : AAHFP 0862 G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri S. Bharath, CIT

सुनवाई की तारीख/Date of Hearing : 31.07.2019

घोषणा की तारीख/Date of Pronouncement : 05.09.2019

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the three appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals)-2, Chennai. Therefore, we heard these appeals together and disposing the same by this common order.

2. There was a delay of 6 days in filing these appeals by the assessee. The assessee has filed petitions for condonation of delay.

We have heard the Ld.counsel for the assessee and the Ld. D.R. We find that there was sufficient cause for not filing these appeals before the stipulated time. Therefore, we condone the delay and admit the appeals.

3. I.T.A. No.857/Chny/2018 is against the quantum assessment order passed by the Assessing Officer. I.T.A. No.856/Chny/2018 is against the penalty levied by the Assessing Officer under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). I.T.A. No.855/Chny/2018 is against the penalty levied by the Assessing Officer under Section 271(1)(b) of the Act.

4. Let's first take the quantum appeal in I.T.A. No.857/Chny/2018.

5. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee is in the business of civil construction. According to the Ld. counsel, the Assessing Officer estimated the profit at 8% of the turnover. The CIT(Appeals) also confirmed the order of the Assessing Officer. According to the Ld. counsel, estimation of profit at 8% of total turnover is incorrect. The remand report filed by the Assessing Officer was not properly appreciated by the CIT(Appeals).

6. We heard Shri S. Bharath, the Ld. Departmental Representative also. The assessee appears to have filed Profit & Loss account and balance sheet before the Assessing Officer. However, no other material was filed before the Assessing Officer to ascertain the correctness of the

net profit declared. The Assessing Officer is expected to verify the books of account and other bills and vouchers to ascertain whether the profit is rightly determined. Since the assessee has not filed any other material except Profit & Loss account and balance sheet even after giving proper opportunity, the Assessing Officer estimated the profit at 8% of total turnover. This Tribunal is of the considered opinion that in the absence of any other material to ascertain the correctness of the profit declared by the assessee, estimation of profit at 8% is very reasonable, therefore, the CIT(Appeals) has rightly confirmed the same. Hence, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

7. Now coming to the appeal regarding the levy of penalty under Section 271(1)(c) of the Act.

8. We heard the Ld.counsel for the assessee and the Ld. D.R. The assessee has disclosed net profit at 2.64%. However, the Assessing Officer estimated the profit at 8% for the purpose of taxation. The question arises for consideration is whether estimation at 8% would amount to concealment of any part of income or furnishing inaccurate particulars of income? This Tribunal is of the considered opinion that estimation of profit involves little bit of guess work, presumption and assumption. Since the assessee could not produce necessary material to support the profit disclosed at 2.64%, the Assessing Officer admittedly

estimated the profit at 8% which was also confirmed by this Tribunal in the earlier part of this order. It does not mean that the assessee has concealed any part of income or furnished inaccurate particulars of income. Estimation of profit at 8% is as per statutory provision, therefore, there cannot be any presumption that the assessee has concealed any part of income or furnished inaccurate particulars. In view of the above, this Tribunal is unable to uphold the orders of the lower authorities. Accordingly, orders of both the authorities below are set aside and the penalty levied by the Assessing Officer is deleted.

9. Now coming to levy of penalty under Section 271(1)(b) of the Act, the Assessing Officer levied penalty of ₹20,000/- for non-compliance of notice issued by the Assessing Officer.

10. We heard both Shri S. Sridhar, the Ld.counsel for the assessee and Shri S. Bharath, the Ld. D.R. From material available on record it appears that the assessee-firm was closed on dissolution on 10.02.2006 by means of dissolution deed. The assessee claims that other than the letter dated 22.05.2009, no other communication was received. This Tribunal is of the considered opinion that dissolution of partnership firm is a reasonable cause on the part of the assessee for non-appearance. Moreover, the assessee has filed appeal before this Tribunal against the assessment order as well as the penalty proceedings, which were confirmed by the CIT(Appeals). On further appeal before this Tribunal,

the assessment proceedings were confirmed. However, the penalty under Section 271(1)(c) was deleted. In those circumstances, levy of penalty under Section 271(1)(b) of the Act is not warranted. Therefore, we are unable to uphold the orders of the authorities below. Accordingly, orders of both the authorities below are set aside and the penalty levied by the Assessing Officer under Section 271(1)(b) of the Act is also deleted.

11. In the result, I.T.A. No.857/Chny/2018 is dismissed, I.T.A. Nos.855 & 856/Chny/2018 are allowed.

Order pronounced in the court on 5th September, 2019 at Chennai.

sd/-
(इंटूरी रामा राव)
(Inturi Rama Rao)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 5th September, 2019.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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