

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री रमित कोचर, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1368/Chny/2019
निर्धारण वर्ष /Assessment Year: 2011-12

Deputy Commissioner of Income-tax
Non Corporate Circle-2(1)
Chennai-600 034

v. Shri A.Vinod Kumar Reddy
4th Floor, Bay Watch
Apartments No.92/93
Coastal Road, Besant Nagar,
Chennai-600090
[PAN: ABOPV6636N]
(प्रत्यर्थी/Respondent)

(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/ Appellant by : Mr.N.Arjunraj , CA
प्रत्यर्थी की ओर से /Respondent by : Ms. R.Anitha JCIT
सुनवाई की तारीख/Date of Hearing : 05.11.2019
घोषणा की तारीख /Date of Pronouncement : 05.11.2019

आदेश / O R D E R

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

This is an appeal filed by Revenue against appellate order dated 01.02.2019 passed by learned Commissioner of Income-tax (Appeals)-2, Chennai (hereinafter called "the CIT(A)") in ITA No. 290/2016-17 for assessment year(ay) 2011-12 , the appellate proceedings had arisen before learned CIT(A) out of penalty order dated 13.10.2016 passed by learned Assessing Officer(hereinafter called "the AO") levying penalty of ₹

1,60,00,000/- u/s 271(1)(c) of the Income-tax Act,1961 (hereinafter called " the Act") against the assessee.

2. At the outset learned counsel for the assessee submitted that this is an appeal filed by Revenue against appellate order dated 01.02.2019 passed by learned CIT(A) deleting penalty of ₹ 1,60,00,000/- levied by the AO u/s 271(1)(c) of the 1961 Act against the assessee. It is submitted that while deciding first appeal filed by assessee, the learned CIT(A) in para number 4 referred to an appellate order dated 17.02.2017 passed by Income Tax Appellate Tribunal, Chennai Bench 'B', Chennai in ITA No. 2657/Mds/2016 for impugned ay; 2011-12 deciding quantum additions made by Revenue in favour of the assessee . Thus, it was submitted that quantum additions itself stood deleted by appellate order passed by this tribunal and hence penalty levied by the AO u/s 271(1)(c) w.r.t. those issues in quantum additions will not survive and learned CIT(A) rightly decided first appeal filed by assessee by deleting penalty levied by the AO against assessee u/s 271(1)(c). It was also brought to our notice that learned CIT(A) also took note of the judgment dated 06.06.2018 passed by Hon'ble Madras High Court in Tax Appeal case in TC(A) No. 149 of 2018 in assessee's own case for impugned ay: 2011-12 holding that no substantial question of law arose and accordingly Revenue appeal stood dismissed by Hon'ble Madras High Court. Thus, the learned counsel for the assessee would submit that this appeal filed by Revenue before tribunal with respect to penalty levied by the AO against assessee u/s 271(1)(c) of the 1961 Act has to be dismissed in view of aforesaid

appellate orders passed by tribunal and thereafter by Hon'ble Madras High Court , both in favour of assessee against quantum additions. Both the appellate orders passed by this tribunal as well by Hon'ble Madars High Court in an appeal filed by Revenue u/s 260A against quantum additions are produced before the Bench and are now placed in file. The learned DR on the other hand submitted that Revenue has not accepted the decision of Hon'ble Madras High Court dismissing Revenue's appeal filed u/s 260A against quantum additions and an SLP is filed by Revenue with Hon'ble Supreme Court. After hearing both the parties and perusing the material on record, we have observed that additions made by AO in quantum has already been decided in favour of the assessee by tribunal and the appeal filed by Revenue with Hon'ble Madras High Court challenging decision of the tribunal u/s 260A stood dismissed on the grounds that no substantial question of law arose from the decision of the tribunal. It is claimed by learned DR that Revenue has filed an SLP with Hon'ble Supreme Court against decision of Hon'ble Madras High Court against quantum additions. In our considered view, present appeal filed by Revenue against appellate order passed by learned CIT(A) deleting the penalty levied by the AO u/s 271(1)(c) by following appellate decision in favour of the assessee in quantum by this tribunal and further also by Hon'ble Madras High Court in assessee's own case for impugned ay: 2011-12, is liable to be dismissed as once quantum additions itself are deleted by this tribunal and the decision of the tribunal is upheld by Hon'ble Madras High Court by holding that no substantial question of law arose from orders of the tribunal, then

in that situation penalty levied by the AO u/s 271(1)(c) on the same issue's in quantum cannot be sustained. The learned CIT(A) has passed well reasoned order and we are not likely to interfere in the well reasoned order passed by learned CIT(A) and we affirm/uphold decision of learned CIT(A) deleting the penalty levied by the AO u/s 271(1)(c) of the 1961 Act against the assessee. The leaned CIT(A) rightly relied upon decision of Hon'ble Supreme Court in the case of K.C.Builders v. ACIT reported in (2004) 265 ITR 562(SC) to hold in favour of assessee by deleting penalty levied by the AO u/s 271(1)(c) of the 1961 Act . The Revenue fails in this appeal. We order accordingly.

3. In the result, the appeal filed by Revenue in ITA no. 1368/Chny/2019 for ay: 2011-12 is dismissed as indicated above.

Order pronounced in Open Court on this 5th November , 2019, in Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(रमित कोचर)

(RAMIT KOCHAR)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 5th November, 2019.

TLN

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