

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' 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.1900/Chny/2018

निर्धारण वर्ष /Assessment Year : 2010-11

Shri M. Karthikeyan,
Prop. Of M/s KAR Constructions,
22A, Othavadai Street,
Acharapakkam,
Kancheepuram District-603 301.

The Deputy Commissioner of
Income Tax,
v. Business Circle I,
Tambaram Range,
Tambaram – 600 045.

PAN : AFUPK 0941 F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : None

प्रत्यर्थी की ओर से / Respondent by : Shri P. Muthushankar, JCIT

सुनवाई की तारीख / Date of Hearing : 03.10.2019

घोषणा की तारीख / Date of Pronouncement : 08.11.2019

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) -10, Chennai, dated 19.01.2018 and pertains to assessment year 2010-11, confirming the penalty levied by the Assessing Officer under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. No one appeared for the assessee inspite of service of notice. Therefore, we heard the Ld. Departmental Representative and proceeded to dispose the appeal on merit.

3. Shri P. Muthushankar, the Ld. D.R. submitted that the assessee is a civil contractor. The assessee entered into various service contracts for construction. According to the Ld. D.R., as per Form 26AS in the database of the Department, it was reflected as if tax was collected / deducted in respect of M/s Terra Infra Development Ltd. and M/s Maytas Infra Ltd. Referring to page 5 of the penalty order, the Ld. D.R. submitted that both M/s Terra Infra Development Ltd. and M/s Maytas Infra Ltd. are not one and the same. They are two different companies having their own TAN numbers. It is also an admitted fact that the assessee had rendered service to M/s Maytas Infra Ltd. According to the Ld. D.R., the assessee claimed before the Assessing Officer the amount received from M/s Terra Infra Development Ltd. and M/s Maytas Infra Ltd. According to the Ld. D.R., M/s Maytas Infra Ltd. is a different entity altogether. It has its own TAN number, therefore, the assessee concealed the receipt of amount from M/s Maytas Infra Ltd. On a

query from the Bench whether M/s Maytas Infra Ltd. has deducted tax while making payment to the assessee? The Ld. D.R. submitted that tax was deducted by both M/s Terra Infra Development Ltd. and M/s Maytas Infra Ltd. and it was credited to the Government account. According to the Ld. D.R., M/s Maytas Infra Ltd. and M/s Terra Infra Development Ltd. are two independent entities and both the companies have made the payments. Therefore, according to the Ld. D.R., the Assessing Officer has rightly levied penalty for non-disclosing the receipt from M/s Maytas Infra Ltd.

4. We heard the submissions of Ld. D.R. and perused the relevant material available on record. From the grounds of appeal it appears that the turnover of the assessee as reported in Profit & Loss account was ₹4,61,30,933/-. However, as per Form 26AS, it was only ₹4,36,51,471/-. When the assessee has disclosed more turnover / receipts, it is not known how the assessee concealed any part of income or furnished inaccurate particulars? Both M/s Terra Infra Development Ltd. and M/s Maytas Infra Ltd. have deducted tax while making the payment. The assessee instead of disclosing contract receipt from two different companies, has failed to enter contract receipt in the name of M/s Maytas Infra Ltd. The fact that

the assessee disclosed ₹4,36,51,471/- as a contract receipt is not in dispute. The assessment completed was accepted by the assessee and the tax was paid. Moreover, M/s Maytas Infra Ltd. deducted tax while making the payment. Therefore, it cannot be said that the assessee concealed any part of income said to be received from M/s Maytas Infra Ltd. Even if the assessee has not disclosed receipt from M/s Maytas Infra Ltd., this is only omission. It cannot be considered to be concealed as held by Apex Court in Price Waterhouse Coopers Pvt. Ltd. v. CIT (2012) 348 ITR 306. In view of the above, this Tribunal is of the considered opinion that this is not fit case for levy of penalty under Section 271(1)(c) of the Act. Accordingly, orders of both the authorities below are set aside the penalty levied by the Assessing Officer under Section 271(1)(c) of the Act is deleted.

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

Order pronounced in the court on 8th November, 2019 at Chennai.

sd/-

(एस. जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 8th November, 2019.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-10, Chennai-34
4. Principal CIT- 7, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.