

आयकर अपीलीय अधिकरण , सी ' न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

श्री धुव्वुरु आर. एल रेड्डी, न्यायिक सदस्य एवं, श्री एस जयरामनलेखा सदस्य समक्

BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 2558/Chny/2017

निर्धारण वर्ष/Assessment Year : 2012-13

Shri. Praveen Kumar,
41/42, Srinivasan Iyer Street,
Chennai – 600 001.Rahul Nahar,
No. 20 (Old No. 16), Erulappan Street,
Sowcarpet, Chennai – 600 079.

The Income Tax Officer,
Vs. Non- Corporate Ward – 5(4),
Chennai.

[PAN: AAPPP 5054Q]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. J. Pavitran Kumar, JCIT

सुनवाईकीतारीख/Date of Hearing

: 17.09.2019

घोषणाकीतारीख/Date of Pronouncement

: .12.2019

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)- 5, Chennai, in ITA No. 162/CIT(A)-5/2015-16 dated 12.09.2017 for assessment year 2012-13, wherein the CIT(A) sustained the penalty of Rs. 61,406/- levied by the AO u/s. 271(1)(c) of the Act.

2. Shri. Praveen Kumar, the assessee, an individual, a wholesale dealer in cosmetics & Confectionery in the name of M/s. Pithambar Marketers. While making the assessment for assessment year 2012-13, the AO found that the assessee has shown of Rs. 3,79,830/- as an outstanding as on 31.03.2012 in respect of M/s. Ruchi Soya Industries Ltd. He obtained confirmation letter from that company and found that there was nil balance as on 31.03.2012. Since, the assessee could not reconcile and agreed to offer the difference as an additional income, the AO completed the assessment adding, inter alia, this sum as an income and initiated penalty proceedings u/s. 271(1)(c). During the penalty proceedings, the assessee submitted that he had running accounts with M/s. Ruchi Soya Industries Ltd. and all the transactions in this account was made via bank and duly accounted for. The purchases made from the parties were duly reflected in the sales tax returns filed for the relevant assessment year which was also on record. The assessee could not reconcile the difference at the fag end of the year due to time constrains etc. However, the AO rejected the assessee's explanation and levied the penalty @ 100% of tax on the income sought to be evaded. Aggrieved, the assessee filed an appeal before the CIT(A). The Ld. CIT(A) dismissed the appeal. Aggrieved against that order, the assessee filed this appeal.

3. The Ld. AR submitted that certain credit and debit notes passed by the company, M/s. Ruchi Soya Industries Ltd. which were not made available to the assessee and hence, the impugned difference arose. The assessee is having a

continuous business account with the company, the difference was minimal compared to the turnover. Considering the assessee's position vis-a-vis, M/s. Ruchi Soya Industries Ltd. with whom substantial business is undertaken, it is not possible for the assessee to insist reconciliation etc. Taking the overall position of the assessee vis-a-vis, M/s. Ruchi Soya Industries Ltd. and the turnover of the assessee, the Ld. AO should not have levied the penalty. The Ld. AO as well as the Ld. CIT(A) failed to appreciate the fact that the accounts duly tallied with other entities and there was no cash transactions. The levy of penalty u/s. 271(1)(c) is unwarranted. Hence, the AR pleaded that the appeal be allowed. Per contra, the Ld. DR supported the orders of the lower authorities.

4. We heard the rival submissions and gone through the relevant material. The assessee is an individual and a wholesale dealer in cosmetic and confectionery. He has continuous business transactions with M/s. Ruchi Soya Industries Ltd. and shown the impugned balance in his books of account. He pleaded that certain credit or debit notes passed by the company were not made available to him and hence the impugned difference arose. Considering the fact that the entire transaction between them and others were through banking channel, the purchases and sales were duly accounted and reflected in the returns filed before the sales tax authorities as well as income tax authorities and the assessee's position vis-a-vis M/s. Ruchi Soya Industries Ltd. etc., the assessee's explanation appears to be plausible and hence we are of the view that the levy of the penalty u/s. 271(1)(c) in this case is not warranted.

Therefore, we direct the AO to delete the penalty levied at Rs. 61,406/-.
Corresponding grounds of the assessee are allowed.

5. In the result, the assessee's appeal is allowed.

Order pronounced on

December, 2019 at Chennai.

(धुव्वुरुआर.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: December, 2019

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त) अपील(/CIT(A) |
| 4. आयकरआयुक्त/CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF |