

आयकर अपीलीय अधिकरण, “डी” न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL ‘D’ BENCH, CHENNAI  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष  
Before Shri Duvvuru RL Reddy, Judicial Member &  
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A. No.1274/Chny/2018  
निर्धारण वर्ष/Assessment Year:2010-11

Shri T.D. Naidu,  
No. 61, D.D. Nagar Bus Stop,  
Kannavalam Post, [Chennai to Tirupathi  
National Highways], Tiruvallur Tk & Dt.,  
Tiruvallur 631 210.  
[PAN: AADPN8927A]

Vs. The Assistant Commissioner of  
Income Tax, Central Circle 2(3),  
No. 46, Mahatma Gandhi Road,  
Nungambakkam, Chennai 600 034.

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Philip George, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri S. Ramakrishnan, CIT  
सुनवाई की तारीख/ Date of hearing : 29.01.2020  
घोषणा की तारीख /Date of Pronouncement : 31.01.2020

**आदेश /O R D E R**

**PER DUVVURUL RL REDDY, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id.  
Commissioner of Income Tax (Appeals) 18, Chennai, dated 29.12.2017  
relevant to the assessment year 2010-11 passed under section 271(1)(c) of  
the Income Tax Act, 1961 [“Act” in short].

2. The appeal filed by the assessee is delayed by 24 days in filing the appeal before the Tribunal, for which, the assessee has filed a petition for condonation of the delay in support of an affidavit, to which; the Id. DR has not raised any serious objection. Consequently, since the assessee was prevented by sufficient cause, the delay of 24 days in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that a search action under section 132 of the Act was conducted at the premises of M/s. Deen Dayal Medical & Educational Trust (DDMET) and Shri T.D. Naidu, Managing Trustee of DDMET on 04.08.2011. Notice under section 153A of the Act was issued and served on the assessee and the return of income was filed on 13.09.2013 declaring total income at ₹.35,200/- and agricultural income of ₹.16,20,000/-. After considering the details furnished against the statutory notices, the Assessing Officer completed the assessment under section 153A r.w.s. 143(3) of the Act by assessing total income of the assessee at ₹.183,36,69,622/- after making various additions. Thereafter, the Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Act and levied penalty of ₹.56,65,05,000/-. Against the levy of penalty, the assessee preferred an appeal before the Id. CIT(A), which was dismissed after considering the

submissions as well as by following the decision in the case of UOI v. Dharmendra Textiles Processors 306 ITR 277 (SC).

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the quantum addition made under section 153A r.w.s. 143(3) of the Act has not attained its finality and hence, the levy of penalty under section 271(1)(c) of the Act will not survive and prayed for quashing the penalty order.

5. On the other hand, the Id. DR dutifully supported the orders of the authorities below.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Against the confirmation of quantum addition, vide order in I.T.A. No. 1411/Chny/2017 date 22.03.2018, the Tribunal remitted the matter back to the file of the Assessing Officer for fresh examination. However, against the confirmation of additions by the Id. CIT(A), the Assessing Officer initiated penalty proceedings and levied penalty under section 271(1)(c) of the Act. Once quantum addition has not attained finality, the levy of penalty, the Tribunal cannot decide the levy of penalty on merits. Our view is fortified by the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Ramakrishna Sons (P) Ltd. 192

ITR 282. Accordingly, the penalty order passed under section 271(1)(c) of the Act stands quashed. However, the Assessing Officer is free to initiate penalty proceedings afresh after completing the reassessment.

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

Order pronounced on the 31<sup>st</sup> January, 2020 at Chennai.

Sd/-  
(S JAYARAMAN)  
ACCOUNTANT MEMBER

Sd/-  
(DUVVURUL RL REDDY)  
JUDICIAL MEMBER

Chennai, Dated, the 31.01.2020

Vm/-

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.