

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI,
CAMP AT COIMBATORE

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.Nos.2288, 2289 & 2290/Chny/2018
(निर्धारण वर्ष / Assessment Years: 2011-12, 2012-2013 & 2014-15)

Shri. P. Padmanaban,
No.6-19A. J V Avenue,
Thirumurugan Nagar,
Veeriyampalayam Road,
Kalapatti,
Coimbatore 641 048.

Vs The Assistant Commissioner of
Income Tax,
Central Circle,-2,
Coimbatore

PAN: AHZPP 8229N]

आयकर अपील सं./I.T.A.Nos.2292, 2293, 2294 & 2295/Chny/2018
(निर्धारण वर्ष / Assessment Years: 2011-12, 2012-13, 2013-2014
& 2014-15)

Shri. Shyam Karthik,
No.6-19A. J V Avenue,
Thirumurugan Nagar,
Veeriyampalayam Road,
Kalapatti,
Coimbatore 641 048.

Vs The Assistant Commissioner of
Income Tax,
Central Circle,-2,
Coimbatore

PAN: CGEPS 9381J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकी ओरसे/ Appellant by

: Shri B. Ramakrishnan, C.A.

प्रत्यर्थीकी ओरसे/Respondent by

: Shri Pavitran Kumar, JCIT

सुनवाईकीतारीख/Date of hearing : 06.02.2020
घोषणाकीतारीख /Date of Pronouncement : 06.02.2020

आदेश /O R D E R

PER BENCH:

These appeals are filed by two different assessees directed against the respective orders of the Commissioner of Income Tax (Appeals)-18, Coimbatore, confirming levy of penalty u/s.271 (1) (c) / 271AAB of the Income Tax Act, 1961 (in short 'the Act'). Since common issue arises for consideration in all the appeals, we heard the same together and disposing off the same by this common order.

2. There is a delay of 192 days in filing the appeals before this Tribunal. The assesses have filed petitions for condonation of delay. Having heard the Ld. representative for the assessee and the Ld.DR, this Tribunal finds that there was reasonable cause on the part of the assessees for not filing the appeals before the stipulated time. Therefore, the delay of 192 days is condoned and the appeals are admitted.

3. Coming to the merit of the appeals, Shri. B. Ramakrishnan, Ld. Representative for the assessee submitted that there was search on 05.09.2013 and the assessment was completed in all the appeals by the

Assessing Officer. The Assessing Officer has also initiated penalty proceedings u/s.271(1) (c) of the Act in all the appeals except in ITA No.2290/Chny/2018 penalty proceedings was initiated u/s. 271AAB of the Act. The Assessing Officer levied penalty accordingly. On appeal by the assessee before the CIT(A), the penalty levied by the AO was confirmed. In the meantime, the Principal Commissioner of Income Tax (in short "the PCIT") set aside the assessment order in all the appeals and directed the AO to make assessment denovo. According to the Ld. Representative when the assessment order was not in existence there cannot be any penalty. Therefore, the penalty levied by the AO as confirmed by the CIT (A) has no independent legs to stand. The Ld. Representative further submitted that subsequent to the order of the PCIT u/s.263 of the Act, the AO has also completed the assessment proceedings and initiated penalty proceedings. Therefore the present penalty proceedings cannot stand in the eye of law.

4. We heard Shri. Pavitran Kumar, the Ld. Departmental Representative also. This Tribunal is of the considered opinion that very basis for levy of penalty u/s.271 (1) (c) and 271AAB of the Act is assessment order. Admittedly, the assessment order was set aside by the PCIT u/s.263 of the Act with a further direction to redo the assessment, hence the assessment order is not in existences. Therefore, the penalty

levied by the Assessing Officer consequent to the non existant assessment order cannot stand in the eyes of law. Accordingly, the orders of both the lower authorities below in all the appeals are set aside and the penalty levied by the AO are deleted.

5. In the result, the appeals filed by the assessee Shri. P. Padmanaban, in ITA Nos. 2288, 2289 and 2290/CHNY/2018 for assessment years 2011-12, 2012-2013 & 2014-15 and the appeals filed by the assessee Shri. Shyam Karthik, in ITA Nos.2292, 2293, 2294 and 2295/CHNY/2018 for assessment Years 2011-12, 2012-13, 2013-2014 & 2014-15 are allowed.

Order pronounced in the court on 6th February, 2020 at Camp at Coimbatore.

Sd/-

(एस जयरामन)

(S. Jayaraman)

लेखासदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिकसदस्य/Judicial Member

Coimbatore.

दिनांक/Dated, the 6th February, 2020.

KV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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