

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH: CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी मंजूनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.515/Chny/2017
Assessment Year: 2012-2013**

Shri. Guraka Prakash Reddy,
No.41/5, Parianna Maistry Street,
Periamet,
Chennai – 600 003.

[PAN: ACTPG 4297N]

(अपीलार्थी/Appellant)

The Deputy Commissioner of
Income Tax,

Vs. Non-Corporate Circle – 5 (1),
Chennai - 600 006.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mr. S. Sridhar, Advocate
: Mr. A.R.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing

: 27.08.2020

घोषणा की तारीख /Date of Pronouncement

: 22.10.2020

आदेश / ORDER

PER V. DURGA RAO, JUDICIAL MEMBER:

This is an appeal filed by the Assessee against the order of the learned Commissioner of Income Tax (Appeals)-5, Chennai in I.T.A No.117/CIT(A)-5/15-16 dated 17.10.2016 for the Assessment Year 2012-2013.

2. There is a delay of sixty-five days in this appeal. The Assessee has filed a delay condonation petition, wherein he has stated that the order under appeal was handed over to the Chartered Accountant, M/s. Venkatagiri & Co. and unfortunately the said appellate order was misplaced while not bringing

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the fact of the receipt of the appellate order to the notice of the senior partner. It is further submitted that the Counsel on record made a further reminder thereby the same was noticed in the office of the Chartered Accountant during the period February 2017, thereafter immediately the appeal was filed. In the above circumstances, there is a delay which is beyond the control of the Assessee, prayed that the delay may be condoned.

3. The learned Departmental Representative had strongly opposed the condonation of delay.

4. We have heard both the sides, perused the affidavit filed by the Assessee. From the Affidavit, we find that the Counsel of the Assessee who appeared before the learned Commissioner of Income Tax (Appeals) had handed over the appellate order to M/s. Venkatagiri & Co. who is supposed to file the appeal before the Tribunal. On repeated requests made by the Counsel for the Assessee, the senior partner of M/s. Venkatagiri & Co. has said that the appellate order copy was misplaced but thereafter the same is traced out and the appeal filed immediately.

From the above, we find that the delay of filing the appeal in these circumstances was beyond the control of the Assessee. In our opinion, there is a sufficient cause to condone the delay, accordingly the delay is condoned.

5. In so far as the merits of the case is concerned, the facts in brief is that the Assessee is in the business of trading in leather and had filed his return of income by declaring a total income of Rs.17,47,220/-. In the Assessment

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Order, the Assessing Officer has made the following additions based on the books of accounts , bank statement, bills and vouchers filed by the Assessee.

“4. In response to this the Assessee has filed a reply on 10.06.2015 and the same is produced as under:

For the assessment year 2012-2013, the assessment was framed 17th March, 2015 and whereas the income declared as Rs.17,47,220/- was enhanced and assessed at Rs.20,87,252/-. While doing so, there were additions made in the total income addition to the total income is based on the following:

- (a) The interest paid to Kotak Mahindra Prime amounting to Rs.40,514/- on car loan taken from the financial institution has been disallowed as per of the Income Tax Act, 1961 even though it was a financial institution.***
- (b) Travelling and Conveyance Expenses amounting to Rs.1,99,302/- was disallowed on the ground that it is not related to business.***
- (c) Business Promotion Expenses amounting to Rs.1,00,216/- was disallowed on it is an expenditure of personal nature.***

All these additions were made based on the assumptions and the said matter is a will not lead to automatic conclusion in the concealment of income inaccurate particulars of income.”

Subsequently, initiated a penalty proceedings u/s.271(1)(c) of the Income Tax Act, 1961.

6. During the course of the penalty proceedings, the Assessing Officer has asked the Assessee that you have not deducted TDS in respect of the payment made to Kotak Mahindra Prime amounting to Rs.40,514 and in respect of the travelling expenses of your wife which is not for the business purpose amounting to Rs.1,99,302/- and in respect of the business promotion expenses amounting to Rs.4,00,864/- has been incurred out of which 25% amounting to Rs.1,00,216 is not for the business purpose. Therefore, the same is disallowed and thereby you have concealed the income.

In response, the Assessee has submitted before the Assessing Officer as under:

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"4. In response to this the Assessee has filed a reply on 10.06.2015 and the same is produced as under:

For the assessment year 2012-2013, the assessment was framed 17th March, 2015 and whereas the income declared as Rs.17,47,220/- was enhanced and assessed at Rs.20,87,252/-. While doing so, there were additions made in the total income addition to the total income is based on the following:

- (a) The interest paid to Kotak Mahindra Prime amounting to Rs.40,514/- on car loan taken from the financial institution has been disallowed as per of the Income Tax Act, 1961 even though it was a financial institution.**
- (b) Travelling and Conveyance Expenses amounting to Rs.1,99,302/- was disallowed on the ground that it is not related to business.**
- (c) Business Promotion Expenses amounting to Rs.1,00,216/- was disallowed on it is an expenditure of personal nature.**

All these additions were made based on the assumptions and the said matter is a will not lead to automatic conclusion in the concealment of income inaccurate particulars of income."

7. After considering the explanations of the Assessee, the Assessing Officer is of the opinion that the Assessee had concealed the income and had imposed penalty u/s.271(1)(c) of the Income Tax Act, 1961.

8. On appeal, the learned Commissioner of Income Tax (Appeals) confirmed the order of the Assessing Officer.

9. On being aggrieved, the Assessee had carried the matter in the appeal before this Tribunal.

10. The learned Counsel for the Assessee had submitted that the addition made by the Assessing Officer were based on the books of accounts, bills and invoices and that neither the Assessee had concealed the income nor had filed inaccurate particulars.

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11. The additions made by the Assessing Officer in the Assessment Order is only on estimation and therefore the penalty levied u/s.271(1)(c) cannot be imposed as it was only based on estimation and had submitted that the penalty may be deleted.

12. The learned Departmental Representative strongly supported the order passed by the lower authorities.

13. We have heard both the sides and perused the materials available on record and gone through the orders of the authorities below.

14. In this case, the penalty levied by the Assessing Officer is on three counts. In the case of the Assessing Officer is that the Assessee had paid interest of Rs.40,514/- to M/s. Kotak Mahindra Prime and no TDS was deducted. Therefore, the same is to be disallowed and added back to the Assessee and the addition was made. The second addition that was made by the Assessing Officer is that the Assessee has incurred a travel and financial expense of Rs.5,81,628/- out of which travelling expenses of the Assessee's wife was amounting to Rs.1,35,1788/- to Singapore and Rs.37,348/- to Pune and Rs.26,166/- to Hyderabad, totaling to an amount of Rs.1,99,302/- that are not business expenditure. He added the same to the income of the Assessee. The third addition made by the Assessing Officer is that the Assessee has debited Rs.4,00,864/- towards business promotion expenses. The expenditure contain elements of personal use and unverifiable in nature. Therefore, 25% of the business promotion is disallowed and added back to the income of the

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Assessee. Accordingly, the penalty levied in response to the notice issued by the Assessing Officer, the Assessee had submitted detailed explanations coupled in detail before the Assessing Officer. The interest paid to Kotak Mahindra Prime amounting to Rs.40,514 and cash loan taken from the financial institutions and therefore no TDS is to be deducted. Travel and financial expenses amounting to Rs.1,99,302/- was related to the business. The business promotion expenses amounting is Rs.1,00,216/- is disallowed as the expenditure was personal in nature. All the additions made by the Assessing Officer are made on assumptions and that it would not lead to concealment of income nor filing of inaccurate particulars. The Assessing Officer after considering the same had levied penalty and was confirmed by the learned Commissioner of Income Tax (Appeals).

15. We find that the above three additions made by the Assessing Officer in this case, the Assessee has filed all the details before the Assessing Officer such as the books of accounts, bills and vouchers. Based on the books of accounts and the bills and vouchers, the Assessing Officer has noticed that the Assessee has incurred such an expenditure and had come to a conclusion that some of the expenditure is personal in nature and that some of the expenditure was not relating to the business and therefore he was of the opinion that there is concealment of income and hence levied penalty u/s.271(1)(c) of the Income Tax Act, 1961.

We have gone through the Assessment Order and also through the order of the learned Commissioner of Income Tax (Appeals) and after

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considering the entire facts and circumstances of the case, it is clear that the Assessing Officer had failed to understand that there was neither concealment of income nor filed inaccurate particulars but simply levied penalty u/s.271(1)(c) of the Income Tax Act, 1961. In this case, we find that the Assessee had neither concealed the income nor filed inaccurate particulars. If the Assessing Officer had made some disallowance, it is neither automatically amounting to neither concealment nor filing of inaccurate particulars.

In the facts and circumstances of the case, we are of the opinion that no penalty can be levied in the case and therefore the penalty is deleted and the order passed by the learned Commissioner of Income Tax (Appeals) is reversed.

16. In the result, the appeal of the Assessee is allowed.

Order pronounced on 22nd October, 2020 in Chennai.

Sd/-

(श्री जी मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(श्री वी दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 22nd October, 2020

IA, Sr. PS

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