

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

“D” BENCH, CHENNAI

श्री बी.आर. बास्करन, लेखा सदस्य एवं श्री एस. एस. गोदारा, न्यायिक सदस्य केसमक्ष

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI S.S. GODARA, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos. 1673 & 355/Mds/2014

निर्धारण वर्ष /Assessment Years : 2009-10 & 2008-09

Shri R. Krishnamoorthy,
C/o Shri S. Sridhar, Advocate,
112/1, Periyar Street,
Erode – 1.

v. The Income Tax Officer,
Ward – I(1),
Tirupur.

PAN : ADWPK 0624 M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri N. Rengaraj, CIT

सुनवाई की तारीख/Date of Hearing : 27.01.2015

घोषणा की तारीख/Date of Pronouncement : 04.02.2015

आदेश / O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

Both the appeals filed by the assessee are directed against the orders passed by Ld CIT(Appeals)—II, Coimbatore and they relate to the assessment years 2008-09 and 2009-10. The assessee is aggrieved by the decision of Ld CIT(Appeals) in confirming the penalty levied u/s 271(1)(c) of the Act in both the

years. Both the appeals were heard together and hence they are being disposed of by this common order, for the sake of convenience.

2. The facts that led to the levy of penalty u/s 271(1)(c) of the Act are stated in brief. The assessee is deriving salary income, share income from firms and income from other sources. The agricultural income declared by the assessee in the two years under consideration was not accepted by the assessing officer and hence he reduced the same. In that process he assessed the agricultural income not accepted by him as income of the assessee under the head 'Income from other sources'. The details of agricultural income declared by the assessee and that accepted by the Assessing Officer are given below:-

Assessment Year	Agricultural income declared by the assessee	Agricultural income accepted by the AO	Income assessed under "Other sources"
2008-09	3,45,46,596	5,00,000	3,40,46,596
2009-10	2,26,72,909	89,71,750	1,37,01,159

Though the assessee preferred appeal before Ld CIT(Appeals) challenging the assessment order passed for AY 2008-09, later he

withdrew the same. The assessee did not file appeal against the assessment order passed for assessment Year 2009-10. In effect, the assessee has accepted the assessment order of both the years.

3. In both the years, the assessing officer levied penalty u/s 271(1)(c) of the Act. In assessment year 2008-09, the AO levied penalty @ 300% of the tax sought to be evaded, i.e., at Rs.3.47 crores, by holding that the assessee is deemed to have concealed particulars of income in terms of Explanation 1 to sec. 271(1)(c) of the Act. In the appellate proceedings, the Ld CIT(A) reduced the quantum of penalty to 200% of the tax sought to be evaded. In assessment year 2009-10, the AO levied penalty at 100% of the tax sought to be evaded, i.e. at Rs.42.28 lakhs, by holding that the assessee has concealed income consciously and willfully. The Ld CIT(A) also confirmed the said penalty order. Aggrieved, the assessee has filed these appeals before us.

4. The Ld A.R submitted that the assessee had cultivated 149.08 acres in AY 2008-09 and 173.62 acres in AY 2009-10. The assessee offered agricultural income in both the years on estimated basis by adopting the market rate of the produce raised by him. However, the AO disbelieved the agricultural holding in AY 2008-09 and accordingly estimated income at Rs.5.00 lakhs. However, in

AY 2009-10, the AO has accepted the agricultural income partially to the tune of Rs.89.71 lakhs. He submitted that the AO has not brought any material on record to disprove the agricultural income declared by the assessee, but he has also resorted to estimate the agricultural income in both the years. He submitted that the AO has accepted the extent of land holding in AY 2009-10 by conducting necessary enquiries through his Inspector of Income tax. The Ld A.R further submitted that the AO has accepted the extent of land holding in AY 2007-08 also by verifying the relevant documents, i.e., the year preceding to the assessment year 2008-09. Accordingly he submitted that the AO was not justified in estimating the agricultural income at a very low amount in AY 2008-09 without considering the extent of land holding. The Ld A.R submitted that the assessee has accepted the agricultural income determined by the AO in both the years.

5. The Ld A.R submitted that the assessee has not concealed any particulars of income or furnished any inaccurate particulars of income. He submitted that the assessing officer has reduced the agricultural income declared by the assessee in both the years by substituting his own estimates and in that process; he has converted the “exempt income” into “taxable income”. He submitted

that the claim of agricultural income has been rejected in both the years only on presumptions and the AO has proceeded to simply estimate the agricultural income. He submitted that the assessing officer did not disprove that the details furnished by the assessee i.e., the extent of land holding, the types of crops raised, the selling rates, the aggregate amount realised etc. by bringing any credible evidence. Accordingly he contended that the mere reduction of agricultural income by substituting his own estimates would not give rise to the charge of concealment of income. Accordingly he prayed that the penalty levied in both the years be deleted.

6. On the contrary, the Ld D.R submitted that the assessee has deliberately declared agricultural income at higher figure in both the years, since the agricultural income is exempt under the Income tax Act. He submitted that the very fact that the assessee has accepted the assessing officer's order in reducing the agricultural income and assessing the difference as income would show that the assessee had taken a chance to declare higher agricultural income. He submitted that the intention of the assessee has come to light since the returns of income of both the years were taken up for scrutiny and the assessee might have escaped, if the returns had been processed u/s 143(1) of the Act. Accordingly he submitted that the

Ld CIT(A) was justified in confirming the penalty levied u/s 271(1)(c) of the Act in both the years.

7. We heard the parties and perused the record. We have already noticed that the assessee had declared agricultural income of Rs.3.45 crores and Rs.2.26 crores respectively for AY 2008-09 and 2009-10. However, the AO has accepted the same at Rs.5.00 lakhs and Rs.89.71 lakhs respectively in AY 2008-09 and 2009-10. In AY 2008-09, the AO has disbelieved the extent of agricultural holdings and accordingly estimated the agricultural income at a token figure of RS.5.00 lakhs. However, we notice that the assessee had disputed the agricultural income estimated for AY 2007-08 and the matter has travelled up to the Tribunal and the ITAT has restored the matter back to the file of the AO. In the set aside proceedings, the AO has examined the relevant documents and has accepted the extent of agricultural holdings. We also notice that the assessing officer has also accepted the extent of land holding in AY 2009-10 also, even though he had observed that the assessee has failed to prove partially the extent of lease hold land with necessary evidences. Despite this observation, the Assessing Officer has proceeded to estimate the agricultural income on the aggregate land holding claimed by the assessee. Thus, it is

seen that the assessing officer himself has accepted the extent of land holding both in the immediately preceding year (AY 2007-08) and in the immediately succeeding year (AY 2009-10). Hence, the very basis on which the agricultural income was reduced in AY 2008-09 is proved to be wrong by the above said facts. Thus, it is seen that the agricultural income has been estimated at a lower figure in AY 2008-09 on the basis of mere presumption about the extent of land holding, which is proved to be wrong. The Assessing Officer has also failed to furnish the basis in adopting a round sum amount of Rs.5.00 lakhs. Thus, the agricultural income determined by the Assessing Officer turns out to be a mere estimate. Under these set of facts, we are of the view that the assessee cannot be found fault with, with the charge of concealment of particulars of income. Accordingly, we set aside the order of Ld CIT(A) in AY 2008-09 and direct the assessing officer to delete the penalty levied u/s 271(1)(c) of the Act for that year.

8. In AY 2009-10, we notice that the assessee had originally declared agricultural income at Rs.2.26 crores. However, during the course of assessment proceedings, the assessing officer asked the assessee to re-estimate the same, since the AO felt that the original estimate was on the higher side. Accordingly, the assessee scaled

down the agricultural income to Rs.1.31 crores. Since the AO still considered the above said amount to be on the higher side, the assessee furnished another estimate showing agricultural income on 173.62 acres at Rs.98.26 lakhs. It is noticed that the assessing officer has accepted the same in principle. However, since the area of cultivation was shown at 17.9 acres out of 35 acres of land in a particular sector, the AO proportionately reduced the agricultural income to Rs.89.71 lakhs. Accordingly he has assessed the difference amount as income of the assessee under the head Income from other sources.

9. The discussions made in the preceding paragraph would show that the assessing officer has simply forced the assessee to scale down the agricultural income by making lower estimates. The AO has examined the extent of land holding and was also satisfied with the same. However, in one of the agricultural record, the area of cultivation was shown at a lower level and hence the assessing officer has considered the same to be a case of furnishing of inaccurate particulars of income. However, the assessing officer has ultimately levied the penalty on the ground that the assessee has concealed the income. Thus, it is seen that there is contradiction in the stand of the assessing officer also. In any case,

it is seen that the assessing officer has substituted the agricultural income declared by the assessee with another estimate only. In our view, such kind of substitution of income on estimated basis cannot be considered to be a case of concealment of particulars of income and hence the same would not give rise to any penalty u/s 271(1)(c) of the Act. Accordingly we set aside the order of Ld CIT(A) in AY 2009-10 also and direct the AO to delete the penalty levied u/s 271(1)(c) of the Act in assessment year 2009-10.

10. During the course of hearing, it was noticed that the assessing officer has made identical disallowances in assessment year 2007-08 and 2010-11. Hence, both the parties were asked to furnish details about the penalty proceedings, if any, initiated in those years. The assessee has furnished a certificate from his Chartered Accountant, wherein it was stated that the penalty proceedings were initiated in both the above said years, but the same was dropped by the assessing officer. The revenue has also filed a letter confirming the fact with regard to AY 2007-08. Thus, it is seen that the Assessing Officer himself has dropped the penalty proceedings on identical disallowances made in AY 2007-08 and 2010-11, which fact also supports the case of the assessee.

11. In the result, both the appeals filed by the assessee are allowed.

Order pronounced on the 4th day of February, 2015 at Chennai.

Sd/-
(एस. एस. गोदारा)
(S.S. Godara)
न्यायिक सदस्य/Judicial Member

sd/-
(बी.आर. बास्करन)
(B.R. Baskaran)
लेखा सदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the 4th February, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-II, Coimbatore
4. आयकर आयुक्त/CIT-III, Coimbatore
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.