

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH, CHENNAI**

श्री जी. मंजुनाथ, लेखा सदस्य एवं श्री अनिकेश बनर्जी, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER  
AND SHRI. ANIKESH BANERJEE, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.: **682/Chny/2020**  
निर्धारण वर्ष / Assessment Year: 2014-15

M/s. Jayasree Construction,  
No.3/A, Sekkiyar Street,  
Netaji Avenue Extn.,  
Nerkundram,  
Chennai – 600 107.

The Income Tax Officer,  
v. Non Corporate Ward-8(2),  
Chennai – 600 034.

**[PAN: AADFJ 2389N]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri.T.V. Muthu Abirami Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. G. Johnson, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 09.03.2022

घोषणा की तारीख/Date of Pronouncement

: 14.03.2022

**आदेश / O R D E R**

**PER ANIKESH BANERJEE, JUDICIAL MEMBER:**

The appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-9 (in brevity Ld. CIT(A)), Chennai bearing order in ITA No. 11/17-18/CIT(A)-9 dated 21.03.2019 for assessment year 2014-15.

2. There is a 88 days delay in filing the appeal. The Counsel of the assessee prayed for the condonation of delay and cause of delay is due to the Covid Pandemic. So, the delay of 88 days is condoned.

3. The assessee raised following grounds which are as follows:

*"1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case and at any rate against the principles of equity, natural justice and fair play.*

*2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.*

*3. For that the Commissioner of Income Tax (Appeals) erred in disposing off the appeal ex parte.*

*4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant could have derived no benefit by not appearing before him for the hearing and that the same could not have been the intent of the appellant.*

*5. For that the appellant had reasonable cause for not appearing before the Commissioner of Income Tax (Appeals) when the case was posted for hearing before him.*

*6. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer ought not to have levied penalty in the case of the appellant.*

*7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant neither concealed any income nor furnished any inaccurate particulars of income, so as to warrant the levy the penalty u/s.271(1)(c).*

*8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that there is no mensrea on the part of the appellant, so as to warrant the levy of penalty u/s. 271(1)(c).*

*9. For that the Commissioner of Income Tax (Appeals) failed to appreciate that there was no finding of concealment of income or furnishing of inaccurate particulars of income in the assessment order, so as to warrant the levy of Penalty u/s. 271(1)(c)."*

4. The brief fact is that the assessment was made u/s. 143(3) of the Income Tax Act, 1961 (in brevity 'the Act') and the addition was

made by the Ld. Assessing Officer (in brevity 'Ld. AO') on the basis of the 12% of the turnover as profit. Accordingly, added back amount to Rs. 18,39,202/-.

4.1 The Ld. AO levied penalty u/s. 271(1)(c) of the Act. Against the penalty order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) sustained the addition amount to Rs. 5,80,000/- u/s. 271(1)(c) of the Act for concealment and for furnishing inaccurate particulars of income. Against the order of the Ld. CIT(A), the assessee filed an appeal before the bench.

5. During the hearing, the Ld. Counsel of the assessee informed that they offered addition @12% on turnover as profit for assessment year 2014-15. The addition was gross addition and accordingly it is in the nature of expenses are disallowed and increased the profit. The Ld. Counsel relied on the judgments of Hon'ble Supreme Court in the case of CIT vs Reliance Petro Products 322 ITR 158 (SC).

6. The Ld. DR of the Revenue relied on the order of the Ld. CIT(A) and the Ld. AO. The Ld. DR argued for sustaining of the penalty u/s. 271(1)(c).

7. We heard both the parties. The addition was made on estimated basis by the Ld. AO. The assessee offered the higher profit during the assessment proceedings. It has not to be determined that particular issue related to concealment or inaccurate particular of the income related to the addition of the assessee's case. Without specific determination, it is not possible to levy penalty u/s. 271(1)(c) of the Act. So, the penalty u/s. 271(1)(c) of the Act is not sustained. Accordingly, the grounds of the assessee are allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the court on 14<sup>th</sup> March, 2022 at Chennai.

**Sd/-**

(जी. मंजुनाथ)

**(G. MANJUNATHA)**

**लेखासदस्य/Accountant Member**

**Sd/-**

(अनिकेश बनर्जी)

**(ANIKESH BANERJEE)**

**न्यायिकसदस्य/Judicial Member**

चेन्नई/Chennai,

दिनांक/Dated, the 14<sup>th</sup> March, 2022

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्था/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |