

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

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं  
श्री मनोज कुमार अग्रवाल, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND**  
**SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.50/Chny/2018  
निर्धारण वर्ष /Assessment Year: 2011-12

Mr.Parthasarathy Kamalakannan,  
No.36, Vaikunthapuram,  
Nungambakkam,  
Chennai-600 034.  
[PAN: AFWPK 4207 L]  
**(अपीलकर्ता/Appellant)**

**v.** The Income Tax Officer,  
Business Ward-XV(4)/NCW-  
3(4), Chennai.  
**(प्रत्यर्थी/Respondent)**

अपीलकर्ता की ओर से/ Appellant by : Mr.B.Suresh, CA  
प्रत्यर्थी की ओर से /Respondent by : Mr.G.Johnson, Addl.CIT  
सुनवाई की तारीख/Date of Hearing : 22.03.2022  
घोषणा की तारीख/Dt. of Pronouncement : 28.03.2022

**आदेश / ORDER**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-4, Chennai, in ITA No.160/2018-19/AY 2011-12/CIT(A)-4 dated 16.12.2019. The impugned penalty order was passed by the ITO, Non-Corporate Ward-3(4), Chennai, vide No.AFWPK4207L/271(1)(C)/2016-17 dated 31.01.2017.

**2.** The only issue in this appeal of the assessee is as regards to the order of the Ld.CIT(A) confirming the levy of penalty by the AO u/s.271(1)(c) of the Income Tax Act, 1961 (in short "the Act"). The brief facts of the case

are that the assessment was framed by the AO u/s.143(3) of the Act and made addition u/s.68 of the Act, amounting to Rs.33,25,000/- being cash deposits in the Savings Bank A/c No.430887467 maintained with India Bank. The AO also added the unexplained investment u/s.68B of the Act, amounting to Rs.10,98,274/- by treating the investment of Rs.18,30,457/- and considering the explanation being his personal saving @ 40%, out of the same i.e. Rs.7,32,183/- and thereby, adding this amount of Rs.10,98,274/-. The AO initiated penalty proceedings u/s.271(1)(c) of the Act. Aggrieved against quantum addition, the assessee preferred an appeal before the Ld.CIT(A) and the Ld.CIT(A) in ITA No.35/2014-15/2011-12/CIT(A)-4 dated 14.10.2015, confirmed the addition of cash deposit added by the AO u/s.68 of the Act at Rs.33,25,000/-. As regards to addition of unexplained investment in purchase of immovable property u/s.69B of the Act, the Ld.CIT(A) restricted the addition at Rs.5,00,000/- as against additions made by the AO Rs.10,98,274/-. The assessee carried this matter before the ITAT and in the meantime, the AO started the penalty proceedings and levied the penalty u/s.27(1)(c) of the Act vide order No.AFWPK4207L/271(1)(C)/2015-16 dated 20.11.2015 on the tax sought evaded on tax deposits amounting to Rs.3,48,000/- and unexplained investment made in the purchase of house property at Rs.5,00,000/-. Therefore, the AO levied the penalty at Rs.3,00,000/-. As regards against this penalty order, the assessee preferred an appeal before the Ld.CIT(A) on 15.03.2019, which was instituted as appeal against order u/s.27(1)(c) of the Act dated 20.11.2015 in ITA No.160/18-19/AY 2011-12/CIT(A)-4,

but before that the Tribunal in ITA No.2127/Mds/2015 vide order dated 01.06.2016 for the AY 2011-12, restricted the addition u/s.68 of the Act, to Rs.10,50,000/- by observing in Para No.4.3, which reads as under:

*4.3 We have heard the rival submissions and carefully perused the materials on record. We find merit in the submissions of the Id. AR. From the cash flow statement submitted by the assessee before the Id. Assessing Officer which is extracted in his order at page Nos. 6 & 7, it is evident that the peak credit and the closing balance of the assessee as on 3.12.2011 is Rs.15,05,892/- against which there is an opening balance as on 30.4.2010 of Rs. 50,000/-. This shows that the maximum undisclosed income earned by the assessee from his real estate broking business would be Rs.10,53,262/- [Rs.15,05,892/- (closing balance) – Rs.50,000/- (opening balance) – Rs.4,02,630/- (income already disclosed in the return of income)]. Therefore, we are of the considered view that the addition on account of cash deposits in the assessee's bank account can be sustained only to the extent of Rs.10,50,000/- as against the addition of Rs.33,25,000/- made by the Id. Assessing Officer which is further sustained by the Id. CIT(A). Therefore, we hereby confirm the addition of Rs.10,50,000/- on account of addition made U/s. 68 of the Act and direct the Id. Assessing Officer to delete the balance amount.*

**3.** The Tribunal as regards to addition of unexplained investment made by the AO, confirmed by the Ld.CIT(A) at Rs.5 lakhs was retained as it is and observed in Para No.6, which reads as under:

*6. During the course of the assessment proceedings, the id. Assessing Officer on examination of the details of the immovable properties purchased by the assessee made an addition of Rs.10,98,274/- invoking the provisions of section 69 of the Act as unexplained investment. On appeal, the Id. CIT(A) examined the issue and arrived at a conclusion that the assessee had genuine source for another Rs.5,00,000/- which was paid by way of demand draft dated 16.12.2010 drawn on Indian Bank and thereby sustained the addition for only Rs.5,00,000/-. Since the assessee has not brought out any further materials to show that the addition of Rs.5,00,000/- is not warranted we do not find it necessary to interfere with the orders of the Ld.CIT(A).*

**4.** The AO started another penalty proceedings and passed order u/s.27(1)(c) of the Act vide order No.AFWPK4207L/271(1)(C)/2016-17 dated 31.01.2017. Vide this order, the AO levied the penalty on the amount of Rs.10,20,000/- sustained by the Tribunal u/s.68 of the Act and levied penalty to the extent of 100% being Rs.2,16,918/- i.e. tax sought to be evaded on the difference amount of Rs.7,02,000/-. We also noted that in the first round of the appeal in the penalty order before the Ld.CIT(A) in

ITA No.202/2016-17/AY 2011-12/CIT(A)-4 dated 23.10.2017, has directed the AO to re-calculate the amount of penalty in terms of Para No.12, which reads as under:

*12. Accordingly, the penalty under section 271 (1) (c) has to be worked out on the amount of tax sought to be evaded on the additional income of Rs.15,50,000/-. The AO had earlier imposed penalty only on the amount of Rs.3,48,000/-, as mentioned at para 8 of the impugned penalty order. However, at para 6 of the impugned penalty order, the AO has stated that the amount of penalty has been imposed on the amount of tax sought to be evaded in respect of the additional income of Rs.3, 48, 000/- and Rs.5,00, 000/-. The AO is directed to verify and reconcile the discrepancy in the amount of penalty imposed by him in the original penalty order. In view of the decision of the Hon'ble Tribunal, the A.O. is directed re-calculate the amount of penalty on the sum of tax sought to be evaded. The AO is also directed to give credit of penalty amount paid by the appellant earlier.*

**5.** Now before us, the Ld.Counsel for the assessee stated that the primary defect in the notice i.e. the jurisdictional issue that the AO while initiating penalty proceedings has not scored-off under which limb the penalty is levied. He stated that even the Ld.CIT(A) in the first round i.e. (although the order dated 16.12.2019) has categorically quashed the penalty order on the jurisdiction by following the decision of the Hon'ble Bombay High Court in the case of CIT v. Shri Samson Perincherry in ITA No.1154 of 2014 dated 05.01.2017 and also the decision of the Hon'ble Karnataka High Court in the case of CIT v. Manjunatha Cotton & Ginning Factory by observing in Para No.9, which reads as under:

*9. Without prejudice to the merits of the case in the instant impugned penalty appeal which now becomes redundant and merely academic in view of the fatal flaw in the penalty notice u/s.274 cited supra and in view of the above discussions and based on the conspectus of facts obtained in the instant impugned order and which is identical in the case of the instant appellant respectfully following the legal authorities conclusive interpretation of law on the issue at hand, the impugned penalty u/s.27(1)(c) imposed of Rs.3,00,000/- is directed to be deleted.*

**6.** The Ld.Counsel for the assessee stated that even the Hon'ble jurisdictional High Court in the case of CIT vs. Original Kerala Jewellers in

TCA No.717 of 2018, order dated 18.12.2018, wherein, the Hon'ble High Court considering the Hon'ble Karnataka High Court decision in the case of CIT vs. Manjunatha Cotton and Ginning Factory, (2013) 359 ITR 565, has deleted the penalty by observing as under:-

*4. The Tribunal referred to and relied upon the decision of the Division Bench of the High Court of Karnataka in C.I.T. Vs. Manjunatha Cotton and Ginning Factory [reported in (2013) 359 ITR 565]. The Division Bench after analysing the subject in an elaborate manner and relating to several decisions of the Hon'ble Supreme Court held that merely because the assessee agreed for addition and accordingly, assessment order was passed on the basis of addition and when the assessee paid the tax and the interest thereof in the absence of any material on record to show the concealment of income, it cannot be inferred that the said addition is on account of concealment, so as to levy penalty under Section 271(1)(c) of the Act.*

*5. We find no error in the order passed by the Tribunal especially when it is admitted that the decision in C.I.T. Vs. Manjunatha Cotton and Ginning Factory has attained finality. Thus, for the above reasons, the appeal filed by the Revenue is dismissed and the substantial questions of law are answered against the Revenue and in favour of the assessee.*

**7.** The similar position where defective notices, were neither of limb is scored off, the notice is treated as defective. We noted that when the very defect is quashed by the Ld.CIT(A) in the first round, nothing survives for penalty on the remainder amount. When this was pointed out to the Id.Sr.DR, he could not controvert the above stated facet situation.

**8.** As the issue is clear in the first round of appeal that the Ld.CIT(A) has deleted the penalty and Revenue is not in appeal against the order of the Ld.CIT(A) and hence, that has become final. However, the penalty levied in the second round will not survive, because the very case is jurisdictional issue goes to the root of the matter, once root is taken out, nothing survives. Hence, we deleted the penalty and allow the appeal filed by the assessee.

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

Order pronounced on the 28<sup>th</sup> day of March, 2022, in Chennai.

**Sd/-**  
(मनोज कुमार अग्रवाल)  
**(MANOJ KUMAR AGGARWAL)**  
लेखा सदस्य /ACCOUNTANT MEMBER

**Sd/-**  
(महावीर सिंह)  
**(MAHAVIR SINGH)**  
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,  
दिनांक/Dated: 28<sup>th</sup> March, 2022.  
**TLN**

आदेश की प्रतिलिपि □ प्रेषित/**Copy to:**

1. □ पीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (□ पील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF