

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.920/Chny/2020
(निर्धारण वर्ष / Assessment Year: 2013-14)

&

आयकर अपील सं./ITA No.921/Chny/2020
(निर्धारण वर्ष / Assessment Year: 2014-15)

Shri P. Padmanaban No. 6-19 A, J V Avenue, Thirumurugan Nagar, Veeriyampalayam Road, Kalapatti, Coimbatore – 641 048.	बनाम/ Vs.	DCIT Central Circle -2, Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AHZPP-8229-N		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri B. Ramakrishnan (FCA) – Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri P. Sajit Kumar (JCIT) – Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	13-06-2022
घोषणा की तारीख / Date of Pronouncement	:	06-07-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2013-14 & 2014-15 arises out of separate orders of learned first appellate authority confirming certain penalty against the assessee. The appeal for

AY 2013-14 arises out of the order of learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] dated 21.09.2020 confirming penalty levied by Ld. Assessing Officer (AO) u/s 271AAB vide order dated 28.06.2019. The assessment was framed by Ld. AO u/s 153A r.w.s. 143(3) r.w.s. 263 of the Act on 31.12.2018. The grounds taken by the assessee read as under: -

1. The order passed by the learned Commissioner of the Income tax (Appeals) is contract to the law, facts and circumstances of the case.
2. The Learned Commissioner of Income Tax (Appeals) erred in confirming the penalty levied by the Assessing Officer u/s.271AAB amounting to Rs.45,24,738/-.
3. The Learned Commissioner of Income Tax (Appeals) erred in confirming the penalty order passed by the Assessing Officer ignoring the fact that the learned Assessing Officer, having mentioned that the penalty is initiated under section 271AAB in his Assessment Order, had issued the notice for levy of penalty under section 274 r.w.s 271(1)(c) of the Act, thereby rendering the penalty proceedings invalid, though later concluded by the levy of the penalty u/s 271AAB of the Act.

As is evident, the assessee is aggrieved by confirmation of penalty u/s 271AAB. The assessee assails the penalty on legal grounds as well as on merits.

2. The Ld. AR advanced arguments assailing the confirmation of penalty which has been controverted by Ld. Sr. DR. Having heard rival submissions, our adjudication would be as under.

3.1 The facts leading to imposition of penalty are that assessee group was subjected to search action u/s 132A on 05.09.2013. Before issuance of notice u/s 153A, the assessee filed return of income u/s 139 at Rs.150.82 Lacs on 15.02.2014. Notice u/s 153A was issued on 27.06.2014 and in response to the same, the assessee filed same return of income on 05.08.2014. An assessment was framed u/s 153A r.w.s. 143(3) on 31.03.2016 accepting the returned income. This order was subjected to revision u/s 263 by appropriate authority vide order dated

20.03.2018 and consequential order was passed on 31.12.2018. However, the income of Rs.150.82 Lacs was again not disturbed by Ld. AO in this assessment order. The penalty proceedings were initiated u/s 271AAB in the body of assessment order.

3.2 Though the assessee defended the penalty, however, Ld. AO held that admission of Rs.150.82 Lacs was made in statement u/s 132(4) which was offered to tax. Had the search not taken place, the assessee would not have disclosed the said income. The assessee also did not pay self-assessment tax and accordingly, the penalty would be leviable @30% in term of clause (c) of Sec.271AAB. The quantum of penalty thus computed came to Rs.45.24 Lacs.

3.3 During appellate proceedings, the assessee, inter-alia, assailed the penalty on legal grounds by submitting that show-cause notice was issued u/s 271(1)(c) whereas the penalty was levied u/s 271AAB. The assessee also submitted that specific limb i.e., concealment of income / furnishing of inaccurate particulars of income, as applicable to the case, was not specified in the notice and therefore, the penalty was bad-in-law. Reliance was placed on various judicial pronouncements to support the arguments.

3.4 The Ld. CIT(A), considering the provisions of Sec.271AAB, held that there was no explicit or implicit requirement that the AO should have recorded satisfaction before levy of penalty. The scope of this Section was materially different from the provisions of Sec. 271(1)(c). Therefore, the legal grounds were dismissed. The other arguments were also dismissed and the penalty was upheld. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. After careful consideration of factual matrix, it could be gathered that though the assessee was searched on 05.09.2013 and it admitted income in statement made u/s 132(4) for Rs.150.82 Lacs, however, the assessee filed return of income u/s 139 before issuance of any notice u/s 153A. The same income was offered in response to notice u/s 153A dated 27.06.2014 and this return was accepted by the revenue in an assessment framed u/s 153A r.w.s. 143(3) on 31.03.2016. Subsequently, this order was subjected to revisions u/s 263 vide order dated 20.03.2018 and another assessment was framed on 31.12.2018. In this assessment also, the returned income has been accepted by Ld. AO. In other words, the order passed on 31.03.2016 u/s 153A r.w.s. 143(3) as well as order assed u/s 153A r.w.s. 143(3) r.w.s. 263 on 31.12.2018 are the same without any further addition. This being so, the impugned penalty, in our considered opinion, is not sustainable since the returned income as filed by the assessee well before issuance of notice u/s 153A has been accepted by the revenue.

5. Another factor is that no show-cause notice intending to levy penalty u/s 271AAB has been issued by Ld. AO before imposing penalty on the assessee. The only notice issued on 31.12.2018 is a notice issued u/s 274 r.w.s. 271(1)(c) which is placed on record. In this notice also, the specific limb as applicable to the case of the assessee has been specified by Ld. AO. It is also discernible that no penalty has been initiated or levied by Ld. AO u/s 271(1)(c). This being so, the penalty proceedings are bad-in-law as per settled legal position. In our considered opinion, it was incumbent for Ld. AO to put the assessee to notice before imposing the proposed penalty so as to enable the

assessee to defend its case. The provisions of Sec.274 mandate Ld. AO to provide an opportunity of hearing to the assessee before imposing any penalty. In other words, issue of show-cause notice for imposition of proposed penalty is sine-qua-non for levying the penalty. Nothing has been shown to us that any such notice was issued to the assessee. Therefore, the penalty could not be sustained in the eyes of law.

6. Considering the above facts and circumstances, we delete the impugned penalty and allow the appeal of the assessee.

7. It is admitted position that the facts in AY 2014-15 are similar. The assessee was assessed u/s 153A r.w.s. 143(3) on 31.03.2016 which was subjected to revision u/s 263. The consequential assessment was framed by Ld. AO on 31.12.2018 accepting the returned income. Consequently, penalty was levied u/s 271AAB for Rs.9.32 Lacs which has been confirmed by Ld. CIT(A) on similar lines.

Facts being pari-materia the same as in AY 2013-14, our findings and adjudication as contained therein would *mutatis-mutandis* apply to this appeal also. In the result, the impugned penalty stand deleted with similar observation. The appeal stand allowed.

8. Both the appeals stand allowed in terms of our above order.

Order pronounced on 06th July, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 06-07-2022.

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR6. गार्डफाईल/GF