

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री जी. मंजुनाथ, लेखा सदस्य एवं श्री संजय शर्मा, न्यायिक सदस्य के समक्ष

**BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, JUDICIAL MEMBER**

आयकर अपील सं./ **ITA No: 1934/Chny/2019**

निर्धारण वर्ष / Assessment Year: 2007-08

Malar Sivakumar
Selvakumar Sago Factory,
136A Manickavasagar Street,
Fairlands, Salem – 636 016.

Income Tax Officer,
v. Ward -1(4),
Salem.

[PAN: AJEPM-1809-Q]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : None

प्रत्यर्थी की ओर से/Respondent by : Shri. A.S. Sumanth, JCIT

सुनवाई की तारीख/Date of Hearing : 17.08.2022

घोषणा की तारीख/Date of Pronouncement : 26.08.2022

आदेश / O R D E R

PER SONJOY SARMA:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), Salem vide ITA order No. 76/2018-19 dated 31.05.2019. The assessment order was framed by the ITO, Ward-1(4), Salem for the Assessment Year 2007-08 u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter "the Act"), vide order dated 27.09.2018.

2. The assessee has raised the following Grounds of appeal that are as under:

1. *The order of the learned CIT (A) is bad and erroneous in Law and against the principles of natural justice.*
2. *The learned CIT (A) erred in not considering the grounds of appeal and written submissions in proper perspective.*
3. *The learned CIT (A) erred in exceeding his jurisdiction by confirming the penalty for "**concealment of income**", while the Assessing Officer levied the penalty for "**furnishing inaccurate particulars of income**.*
4. *The learned CIT (A) erred in not considering the vital fact that it is the "**satisfaction**" of the Assessing Officer who initiated the penalty proceedings in the course of proceedings before him" and certainly not that of the CIT (A), without there being any enhancement, to simply substitute the satisfaction arrived at by the Assessing Officer.[relying on **84 1TR 183[All]; 94 TTR 154 [All] ;77 ITD 340 [Chd] and ITA No: 5046/Del/2012 dt.10/05/2013.***
5. *While the learned CIT (A), in confirming the addition of Rs.4,93,360/- in the quantum appeal-copy of the appellate order is enclosed-gave a finding that the assessee has not made any efforts to locate he whereabouts of the trade creditors and that there arises a doubt whether the transaction is genuine or not, without rejecting the quantity and cost of purchases, he erred in confirming the penalty.
And for other reasons that may be adduced at the time of hearing, the appellant prays that this appeal be admitted, considered and justice be rendered.*

3. At the time of hearing none appeared on behalf of the assessee, although repeated notices were issued upon the assessee by the Registry from time to time. However, none appeared in response to repeated notices, the conduct of the assessee shows that the assessee is no more interested in pursuing the appeal and as such we have no other option but to decide the same exparte, and decide the issue on the basis of the material available on record, as we cannot keep appeal pending

for inordinate time. Accordingly, we are going to decide the same with the assistance of the Ld. DR and documents available on record.

4. The brief facts of the case are that the assessee is an individual and filed its return showing an income of Rs. 1,73,250/- on 12.10.2017. The case was processed u/s. 143(1) of the Act and subsequently it was selected for scrutiny in accordance with scrutiny proceedings. Thereafter, notice u/s. 143(2) was issued in compliance of which assessee filed necessary submissions and after going through the same, the AO made addition of Rs. 8,81,960/- in respect of certain creditors and treated the same as income u/s. 68 of the Act.

5. Dissatisfied with the above order, the assessee preferred an appeal before the CIT(A). However, the appeal of the appellant was dismissed by the Id. CIT(A).

Aggrieved by the order of the Ld. CIT(A), assessee preferred an appeal before the Hon'ble ITAT, Chennai and Tribunal vide its order in ITA No. 2167/Mds/2014 dated 13.11.2015 remitted the issues back to the file of the CIT(A) for reconsideration by passing a speaking order. Consequent to that effect, the CIT(A) passed

an order dated 08.02.2018 where the appeal of the assessee is partly allowed by the CIT(A) and confirmed the addition made by the AO in respect of sundry creditors an amount of Rs. 4,93,360/- . Subsequent to the above, the Assessing Officer passed an order u/s. 271(1)(c) of the Act dated 27.09.2018 and he levied an penalty of Rs. 1,50,970/- (100% of the tax sought to be evaded u/s. 271(1)(c) of the Act) upon the appellant assessee, immediately after it the assessee preferred an appeal before Id. CIT(A). However, the appeal was dismissed by the Ld. CIT(A) and confirmed the penalty imposed upon the assessee.

6. Aggrieved by the order of the Ld. CIT(A), the appellant assessee preferred instant appeal before this Tribunal raising almost five issues in the appeal. However, going through the grounds we noticed that although there are five grounds but the assessee's main grievance is against the levy of penalty by the Jurisdictional Assessing Officer. While we going through the material available on record, it is noticed that certain transactions were made by assessee through brokers and AO directed to produce those persons before him to examine the transactions, however, due to lapse of time the assessee expressed inability to produce the parties for cross examination and experiencing

various difficulties the assessee surrendered the alleged amount for taxation and he do so due to buy peace and avoid litigation. The submissions of the assessee did not recorded by the AO and he invoked section 271(1)(c) of the Act upon the assessee although it was not existed in facts and circumstances of the case. We after pursuing fact, it has come to our mind that levy of penalty in present circumstances of case required some more evidence to prove that money had been flowed from the assessee to the creditor for such transactions and such money credited by the assessee in his books of accounts belongs to him. However, in this case those facts are absent and mere surrender of the amount by the assessee did not constitute that assessee wanted to evade tax by concealment of his income. Therefore, it cannot be said that assessee has concealed the particular income with the meaning of section 271(1)(c) of the Act or there is not deep concealment for attaining as specified u/s. 271(1)(c) of the Act. It is a well settled law that assessment proceedings and penalty proceedings are distinct and findings given in the assessment proceedings though it constitutes good evidence cannot be conclusive in the penalty proceedings. In the penalty proceedings, the entire evidence in case has to undergo a reappraisal in order to establish the guilt of the assessee to prove

that there was mensrea in the mind of assessee and to sustained penalty u/s. 271(1)(c) of the Act, the ingredients must be present as we discussed above.

7. We after considering the facts and circumstances of the case we opined that it is not a fit case to levy penalty. Accordingly impugned order passed by the authority below is not in accordance with law and accordingly cancelled.

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

Order pronounced in the court on 26th August, 2022 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखासदस्य/Accountant Member

Sd/-

(संजय शर्मा)

(SONJOY SARMA)

न्यायिकसदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 26th August, 2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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