

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 468/Chny/2019

निर्धारण वर्ष / Assessment Year: 2013-14

Shri. S. Gopi, ACIT,
Prop: S.S. Jewellery, v. Central Circle,
38/118, Duraisamy Naidu Street, Salem.
Dharmapuri – 636 701.

[PAN:ACDPG-9303-M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. T.S. Lakshmi Venkatraman, FCA

प्रत्यर्थी की ओर से/Respondent by : Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 20.10.2022

घोषणा की तारीख/Date of Pronouncement : 02.11.2022

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-18, Chennai, dated 06.12.2018 and pertains to assessment year 2013-14.

2. The assessee raised the following grounds of appeal:

"1. The learned CIT(A) is not justified in sustaining the penalty levied by the AO u/s. 271AAB r.w.s. 274 of the IT Act to an extent of Rs. 26,73,750/-

2. *The penalty proceeding initiated by notice u/s. 271AAB r.w.s. 274 dated 16.03.2015 is bad in law.*

3. *In the course of appeal proceedings the appellant filed detailed written submissions with CIT(A) on 19.11.2018. In view of the facts narrated in the above written submissions both on merits and legality the appellant prays the penalty of Rs. 26,73,750/- levied by the AO and sustained by CIT(A) may be deleted and justice rendered."*

3. The brief facts of the case are that, the assessee is an individual and proprietor of M/s. SS Jewellery, Dharmapuri. The assessee filed return of income for the assessment year 2013-14 on 08.01.2014 declaring a total income of Rs. 23,23,270/-. A requisition u/s. 132A of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was made in the case of Shri S. Gopi, Proprietor of M/s. SS Jewellery, based on the authorization issued by the DIT (Inv.), Chennai dated 13.12.2012. The Railway Police, Coimbatore intercepted a suspicion person by name Shri. Anandan on 12.12.2012 at Coimbatore Railway Station, who was carrying the bag containing a cash of Rs. 89,12,500/-. Shri. Anandan stated before the Railway Police that cash belongs to Shri S. Gopi, Proprietor of M/s. SS Jewellery, Dharmapuri. Shri. S. Gopi, did not offer proper explanation with documentary evidences with the origin of the cash and thus, the Railway Police took and

seized cash and intimated the issue to the Investigation Unit, Coimbatore on 13.12.2012.

4. Consequent to requisition u/s. 132A of the Act, the case was centralized with DCIT, Central Circle, Salem and the Assessing Officer issued notice u/s. 153A of the Act dated 09.07.2014 for the assessment years 2007-08 to 2012-13. In response, the assessee has filed a revised return on 12.11.2014 and declared total income of Rs. 1,12,35,770/- which includes cash found and seized by the Railway Police amounting to Rs. 89,12,500/-. During the course of assessment proceedings, the assessee was called upon to explain the source for cash deposit, for which, the assessee claimed that it is out of sales made from 7.12.2012 to 11.12.2012. The AO rejected the arguments of the assessee on the ground that the assessee was not maintaining books of accounts for his business and further, no cash book /documents were produced and thus, made addition of Rs. 89,12,500/- u/s. 69A of the Act as unexplained money.

5. Subsequently, penalty proceedings u/s. 271AAB of the Act was initiated and accordingly notice u/s. 271AAB r.w.s.

274 of the Act was issued. In response, the assessee submitted that he had filed return in response to notice u/s. 153A of the Act and admitted income towards seized cash of Rs. 89,12,500/- and also paid tax. Therefore, penalty cannot be levied u/s. 271AAB of the Act. The AO, rejected arguments of the assessee and levied penalty u/s. 271AAB of the Act at Rs. 26,73,750/- which is 30% of the undisclosed income of Rs. 89,12,500/- under clause (c) of section 271AAB of the Act. The assessee carried the matter in appeal before the first appellate authority, but could not succeed. The Ld. CIT(A) for the reasons stated in their appellant order dated 06.12.2018 sustained penalty levied by the Assessing Officer.

6. The Ld. Counsel for the assessee referring to show cause notice issued u/s. 271AAB r.w.s. 274 of the Act, submitted that the penalty order passed by the AO is invalid and liable to be quashed, because the AO has not specified why penalty can be levied in the facts and circumstances of this case. The Ld. Counsel for the assessee submitted that, on merits penalty cannot be levied because cash seized by Railway Police on 12.12.2012 is recorded in books of accounts maintained for relevant assessment year and further the assessee has

admitted additional income in the return of income filed in response to 153A notice issued by the AO. Therefore, unless the income on which penalty levied by the AO comes under the definition of undisclosed income, the question of levying penalty u/s. 271AAB of the Act does not arise.

7. The Ld. DR on the other hand supporting the order of the CIT(A), submitted that the assessee could not explain the manner in which undisclosed income is derived, although he has admitted undisclosed income in the return of income filed in response to notice issued u/s. 153A of the Act. Therefore, the AO has rightly levied penalty under clause (c) of section 271AAB of the Act and their order should be upheld.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. As regards the legal arguments taken by the assessee in light of notice issued u/s. 271AAB r.w.s. 274 of the Act, in light of the decision of Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565 and decision of Hon'ble Supreme Court in the case of CIT vs SSA's Emerald Meadows [2016] 242 Taxman 180 (SC), we

find that there is no merit in arguments advanced by the Ld. Counsel for the assessee in light of above two judgments, because penalty u/s. 271(1)(c) and penalty u/s. 271AAB operates under different circumstances and further, penalty u/s. 271(1)(c) of the Act there is a provision for levy of penalty for two situations i.e., concealment of particulars of income and also furnishing inaccurate particulars of income, whereas, u/s. 271AAB of the Act, in a case where search has been initiated u/s. 132 of the Act on or after 01.07.2012, the assessee shall pay by way of penalty in addition to tax, if any, payable by him, and said penalty ranges from 10% to 30% depending upon the conduct of the assessee. In this case, there is no dispute with regard to the fact that the assessee could not satisfactorily explain with necessary evidences, source for cash seized by Railway Police and therefore, the assessee had admitted additional income of Rs. 89,12,500/- in the return of income filed in response to notice issued u/s. 153A of the Act. Therefore, in our considered view, the arguments of the Ld. Counsel for the assessee that the penalty cannot be levied u/s. 271AAB of the Act is *devoid* of merits.

9. Having said so, let us come back to the reasons given by the AO to levy penalty of 30% on undisclosed income. The AO has levied penalty under clause (c) of section 271AAB of the Act, on the ground that the assessee although admitted additional income and paid tax, but did not specify the manner in which such income has been derived. We find that the reasons given by the AO to levy 30% penalty on undisclosed income is not backed by cogent reasons, because clause (c) of section 271AAB of the Act is applicable, if assessee does not admit undisclosed income in the statement recorded u/s. 132(4) of the Act, and also not declared said income in the return of income furnished within the specified period and pays the tax altogether with interest, if any, in respect of the undisclosed income. In this case, the assessee has admitted undisclosed income in the return of income filed in response to notice u/s. 153A of the Act and also specified the manner in which said income has been derived by filing necessary bills for cash sales made during the period between 07.12.2012 to 11.12.2012. Further, the assessee has admitted undisclosed income in the return of income and also paid tax together with interest, if any, in respect of the undisclosed income. Although, the AO has not accepted explanation furnished by

the assessee on the manner in which said income has been derived, but on the basis of evidences filed by the assessee, we are of the considered view, that the assessee has specified the manner in which said income has been derived. Therefore, in our considered view clause (a) of section 271AAB of the Act is applicable in the given facts and circumstances of this case. Therefore, we direct the AO to restrict the penalty levied u/s. 271AAB of the Act @ 10% of the undisclosed income of Rs. 89,12,500/-.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the court on 02nd November, 2022 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/Judicial Member

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 02nd November, 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 |