

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

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री मंजूनाथा .जी, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRIMANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.616 to 619/Chny/2022
निर्धारण वर्ष /Assessment Years: 2017-18 to 2020-21

Mr.S.Manoharan,
G-3, Saratha Krupa Appt.,
No.55 (Old 47), Naidu Road,
Sivananda Colony,
Coimbatore-641 012.

v. The Dy. Commissioner-
of Income Tax,
Central Circle-2,
Coimbatore.

[PAN:AEDPM 7539 R]
(अपीलार्थी /Appellant)

(प्रत्यर्थी /Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.N. Arjunraj, CA
For Mr.S.Sridhar, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr.S.Senthil Kumaran, CIT

सुनवाईकीतारीख/Date of Hearing

: 22.02.2023

घोषणाकीतारीख /Date of Pronouncement

: 28.02.2023

आदेश / ORDER

PER MANJUNATHA.G, AM:

These four appeals filed by the assessee are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals)-19, Chennai, all dated 11.07.2022 and pertains to assessment years 2017-18 to 2020-21. Since, the facts are identical and issues are common, for the sake of convenience, these appeals are being heard together and disposed off, by this consolidated order.

:: 2 ::

ITA Nos.616 & 617/Chny/2022 for the AYs 2017-18 & 2018-19:

2. The assessee has, more or less, raised common grounds of appeal for both the assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2017-18, are re-produced as under:

1. The order of the Commissioner of Income Tax (Appeals) - 19, Chennai -600034 dated 11.07.2022 vide DIN & Order No.ITBA/APL/M/250/2022-23/1043795746(1) for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT(A) erred in confirming the levy of penalty u/s 270A of the Act in consequence to the assessment completed in terms of Section 153C of the Act without assigning proper reasons and justification.

3. The CIT(A) failed to appreciate that the levy of penalty u/s 270A of the Act on the facts and in the circumstances of the case was wrong, incorrect, erroneous, invalid, unjustified and not sustainable both on facts and in law.

4. The CIT(A) failed to appreciate that having issued the show cause notice without incorporating the precise charge, the consequential levy of penalty should be reckoned as bad in law.

5. The CIT(A) failed to appreciate that in any event the presumption of under reporting in consequence of any misreporting of income was wholly unjustified and ought to have appreciated that the estimated rental income assessed would not attract the penal provisions under consideration automatically.

6. The CIT(A) failed to appreciate that the findings from para 4.2 of the impugned order were wrong, incorrect, erroneous, invalid, unjustified and not sustainable both on facts and in law.

7. The CIT(A) failed to appreciate that the reference to seized materials was completely tangential as well as not relevant and hence ought to have appreciated that the assessment of rental income on the facts of the case was wrong, incorrect, erroneous, invalid, unjustified and not sustainable both on facts and in law.

8. The CIT(A) failed to appreciate that the search assessment completed in the hands of the Appellant u/s 153C of the Act was invalid and not sustainable in law and ought to have appreciated that the sustenance of levy of penalty in consequence to the invalid search assessment order should be considered as nullity in law.

9. The CIT(A) failed to appreciate that the order imposing penalty under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

10. The CIT(A) failed to appreciate that there was no proper opportunity given before passing of the impugned order as well as before passing the penalty order and any order passed in violation of the principles of natural justice would be nullity in law.

11. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

:: 3 ::

3. The brief facts of the case are that the assessee, Mr.S.Manoharan, is the Managing Director of M/s. Grambles Consultancy Services Pvt. Ltd., Coimbatore, has filed its return of income for the AY 2017-18 u/s.139(1) of the Income Tax Act, 1961 (in short "the Act") on 03.11.2017 admitting total income of Rs.73,64,670/-. A search u/s.132 of the Act, was conducted on 30.04.2019, on Mr. S. Martin and his associated group cases. The business premises of M/s. Grambles Consultancy Services Pvt. Ltd., is one of the connected cases, was also covered under the search operation. During the course of search, a statement u/s. 132(4) of the Act, was recorded from Mr.S.Manoharan and questioned about certain incriminating materials found in the form of loose sheets. In response, he admitted that rental income received from certain properties was not disclosed in the return of income filed for the impugned assessment years. Consequent to search, the assessment has been completed u/s.143(3) of the Act r.w.s.153C of the Act, on 04.03.2021 and determined total income of Rs.79,64,670/- by making addition towards undisclosed income of Rs.6 lakhs towards unaccounted rental income.

4. Penalty proceedings u/s.270A of the Act, was initiated and called upon the assessee to explain 'as to why' penalty for underreporting of income, cannot be levied. In response, the assessee submitted that mere admission of undisclosed income towards rental income, does not **per-se** leads to conclusion that there is an undisclosed income within the meaning of Section 270A Explanation-C which attracts penalty provisions.

:: 4 ::

The assessee further contended that although, he had admitted undisclosed income towards rental receipts, but such rental income has been derived on the basis of estimation without there being any reference to incriminating material found during the course of search for those assessment years. Therefore, the question of levying penalty for underreporting of income does not arise. The AO after considering relevant submissions of the assessee and also taken note of statement recorded from the assessee during the course of search, opined that incriminating material found during the course of search, shows undisclosed income on account of rental income for the assessment year in question and further, in the statement recorded u/s.132(4) of the Act, the assessee has admitted undisclosed income. However, failed to disclose said income in the return of income filed in response to notice issued u/s.153C of the Act, and paid taxes. Therefore, the Assessing Officer opined that the assessee has under reported income in terms of provisions of Sec.270A(9)of the Act, which attracts 200% penalty and thus, levied penalty of Rs.3,70,800/-. The relevant findings of the AO, are as under:

4.0. I have perused submission made by the assessee. The assessee's contention that he did not want any trouble nor entangle with any legal battle and in order to buy peace, he decided to admit the same as rental income and paid re taxes thereon is not acceptable. During the course of search certain incriminating documents with respect to Rental income received for the F.Y 2013-14 to 2019-20 were found and impounded. Based on which statements were recorded from the assessee and he had admitted that he omitted to disclose the rental income and promised to disclose. The assessee had already filed his return of income for A.Y 2017-18 on 03.11.2017 prior to the Search operation on 30.04.2019. It was only

after the search conducted the assessee came forward and disclosed the undisclosed Rental income detected during the Search. Had a search not been conducted the assessee

:: 5 ::

would not have been disclosed income. The assessee has agreed upon for the addition made during the course of assessment proceedings.

5.0 Whether disclosure made by the assessee after the search conducted falls under misrepresentation of facts cannot be altered ignoring the satisfaction drawn by the Assessing Officer in the assessment order. In the instant case, the AO has drawn conclusion that though the assessee has offered the income detected during the course of search but failed to fully disclose the same in the return of income filed held such representation as misreporting and initiated penalty 270A on the same ground, hence, the clause (a) of subsection (6) of 270A is not applicable for this case and accordingly proceed to levy penalty @200% of the amount of tax payable on under reported income.

6.0 penalty proceedings initiated u/s 270A(9) on the ground of under reporting which is sought to be levied @ 200% of the amount of tax payable on under reported income i.e. 200% Tax on Rs.6,00,000/-. The calculation is worked out as under:

Misreported Income	Rs.6,00,000
Tax+SC+EC on above	Rs.1, 85,400
200% of the above	Rs.3,70,800

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee challenged penalty levied u/s.270A(9) of the Act, on the ground that additions made towards undisclosed income on account of rental receipt is only an estimation, which does not warrant levy of penalty. The Ld.CIT(A) after considering relevant submissions of the assessee and also by relying upon the decision of the Hon'ble Supreme Court in the case of MAK Data (P) Ltd. v. CIT reported in [2007] 161 Taxman 340 (SC), opined that additions made towards undisclosed income on account of rental receipts, is not on the basis of estimation, but quantification as per material found during the course of search. Further, had the search been not taken place, the income towards rental receipts would not have been disclosed. Therefore, he opined that there is no error in the reasons given by the AO to levy penalty u/s.270A(9) of the Act, for underreporting of income. The relevant findings of the Ld.CIT(A) are as under:

:: 6 ::

4.2.1 I have considered the argument of the AR, facts of the case, assessment order and perused the material placed before me. As per the appellant, the AC) made addition on estimated rental income based on the loose sheets recovered during the search and the appellant did not contest against this addition in appeal only with a view to purchase peace with the department, the appellant further submitted that, since the quantum addition itself was made on estimated basis therefore the penalty cannot be levied for misreporting of income derived on estimation.

4.2.2 The submission, in support of the ground cannot be accepted as the appellant did not disclose the said rental income for taxation neither at the time of filing return of income u/s 139(1) nor in response to the notice u/s 153C of the act. Only during the course of search proceedings, the appellant accepted the rental income. Further, appellant's claim to purchase peace with department is an afterthought made by the appellant. Thus, it is very clear that the appellant's intention was to misreporting of the income. Being not contesting the quantum addition in appeal forum does not show the co-operation view of the appellant and this cannot prevent the AO in levying the penalty u/s 270A for misreporting of income.

The AO also relied upon the judgement of the Supreme Court of India in case of MAK Data (P) Ltd Vs. Commissioner of Income-tax-II reported in "MAK Data (P) Ltd vs CIT (2007) 161 Taxman 340 (SC). The SC held in this decision that " The AO, in our view, shall not be carried away by the plea of the assessee like "voluntary disclosure ", "buy peace", "avoid litigation", "amicable settlement", etc to explain away its conduct. The question is whether the assessee has offered any explanation for the concealment of particulars of income or furnishing inaccurate particulars of income " In pursuant to the above decision of the Apex Court, appellant's argument cannot be accepted.

4.2.3 The appellant further submitted that the addition was made on estimate basis and heavily relied upon some case laws mentioned below:-

CIT v. Krishi Tyre Re-treading & Rubber Industries 2014 Tax Pub(DT) 0183 (Raj-HC) Assistant CIT v. Allied Construction 2007 TaxPub (DT) 0115 (Del-Trib) Harigopal Singh v, CIT 2002 Taxpub (DT) 1625 (P & H-HC)

On perusal of above-mentioned case-laws it was found that these are not relevant to the appellant case. In these decisions the penalty u/s 271(I)(c) for concealment of income was deleted by Hon'ble Courts and Tribunals where addition was made on estimation on total turnover or gross profit of the business. In the appellant's case the addition was made under the head "income form, house property" on the basis of extracts of the cash books which were seized during the search at Kolkata and Coimbatore containing details of unaccounted cash receipts and payments. In addition to this, section 23 of the act also gives a formula to determine the "Annual Value" of the property. In my considered view, this addition was not made on estimate basis. Thus, these case laws are not relevant to this case. The appellant failed on this ground. Therefore, I do not find any reason to interfere in penalty order of the AO, Hence, the penalty levied by the AO is confirmed.

6. The Ld. Counsel for the assessee submitted that the Ld.CIT(A) erred in confirming penalty levied u/s.270A(9) of the Act, without appreciating the fact that undisclosed income towards rental receipts does not have any nexus with incriminating material found during the course of search. He further submitted that additions made towards rental income is only on estimation basis and the assessee has agreed for addition to 'buy

:: 7 ::

peace' from the Department. Therefore, it cannot be said that there is an undisclosed income as per sec.270A of the Act, which warrants penalty. He further submitted that the AO has initiated penalty for misreporting of income, whereas, finally concluded that it is a case of underreporting of income, for which default, he proposes to levy of penalty. He further submitted that for misreporting of income, immunity provided u/s.270AA of the Act, does not applicable, whereas, for underreporting of income, the assessee can go for immunity, if he satisfies certain conditions. Therefore, he further submitted that the matter may be set aside to the file of the AO to give one more opportunity to the assessee to avail the benefit of immunity provided u/s.270AA of the Act.

7. The Ld. DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that it is a clear case of underreporting of income towards rental receipt, which is evident from the fact that during the course of search, incriminating material found clearly suggest that the assessee is in receipt of rental income, but said income has not been reported in the return of income filed for the relevant to assessment year before the date of search. The AO after considering relevant facts has rightly levied penalty and their orders should be upheld.

8. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The provisions of Sec.270A of the Income Tax Act, 1961 deals with levy of penalty, in a case, where search, has been taken place after certain period and as per

:: 8 ::

said section, a person shall be considered to have underreporting of income, if the income assessed is greater than the income determined in the return processed u/s. 143(1)(a) or 143(3) of the Act. Further, as per said section, the case of misreporting of income referred to in sub-section (8) of Sec. 270A of the Act, shall be failure to record any receipt in books of accounts having a bearing on total income. In this case, from the facts available on record, it is abundantly clear that although, the assessee has received rental receipts from properties, but said rental income has not been accounted in the books of accounts, which is having a bearing on total income computed for the impugned assessment years. Therefore, in our considered view, it is a clear case of misreporting of income, which attracts penalty u/s.270A of the Act. In so far as arguments of the Ld. Counsel for the assessee that additions made towards undisclosed income is only estimation of rental receipts without any reference to incriminating material found during the course of search, we find that during the course of search, incriminating documents with respect to rental income received for FYs 2013-14 to 2019-20, were found and impounded. Further, the assessee was called upon to question the documents and in response to a specific question, the assessee admitted to have received rental income, but failed to disclose rental income in the return of income filed for relevant to assessment year. Therefore, we are of the considered view that had search not been conducted, the assessee would not have been disclosed income and thus, we are of the considered view that it is a case

:: 9 ::

of misreporting of income as per provisions of Sec.270A(9) of the Act, and the AO has rightly levied penalty @200% of the amount of tax payable. In so far as various case laws relied upon by the assessee, including decision of the Hon'ble Delhi High Court in the case of Prem Brothers Infrastructure LLP v. NFAC, reported in [2022] 288 taxmann 768 (Delhi), we find that in the said case, the Hon'ble Delhi High Court has set aside the issue to give opportunity to the assessee to avail immunity provided u/s.270A of the Act, on the ground that in the penalty order, there is no whisper as to which limb of Section 270A of the Act, has attracted and how the ingredients of sub-section (9) of Sec.270A of the Act, was satisfied. In this case, facts brought out by the AO clearly suggest that it is a case of misreporting of income on account of failure to disclose rental receipts in the return of income filed for the assessment year before the date of search. Therefore, we are of the considered view that case law relied upon by the assessee does not applicable to the facts of the present case and thus, rejected.

9. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that there is no error in the reasons given by the Ld. CIT(A) to sustain penalty levied by the AO u/s.270A(9) of the Act, for misreporting of income and thus, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss the appeals filed by the assessee for the AYs 2017-18 and 2018-19.

:: 10 ::

10. In the result, appeals filed by the assessee in ITA Nos.616 & 617/Chny/2022 for the AYs 2017-18 & 2018-19 are dismissed.

ITA Nos.618 & 619/Chny/2022 for the AYs 2019-20 & 2020-21:

11. The assessee has, more or less, raised common grounds of appeal for both the assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2019-20, are re-produced as under:

1. The order of the Commissioner of Income Tax (Appeals) - 19, Chennai -600034 dated 11.07.2022 vide DIN & Order No.ITBA/APL/M/250/2022-23/1043795789(1) for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT(A) erred in confirming the levy of penalty u/s 271AAB of the Act in consequence to the assessment completed in terms of Section 153C of the Act without assigning proper reasons and justification.

3. The CIT(A) failed to appreciate that the levy of penalty u/s.271AAB of the Act on the facts and in the circumstances of the case was wrong, incorrect, erroneous, invalid, unjustified and not sustainable both on facts and in law.

4. The CIT(A) failed to appreciate that having issued the show cause notice without incorporating the precise charge, the consequential levy of penalty should be reckoned as bad in law.

5. The CIT(A) failed to appreciate that in any event the presumption of undisclosed income as a consequence to the search was wholly unjustified and ought to have appreciated that the estimated rental income assessed would not attract the penal provisions under consideration automatically.

6. The CIT(A) failed to appreciate that the findings from para 4.2 of the impugned order were wrong, incorrect, erroneous, invalid, unjustified and not sustainable both on facts and in law.

7. The CIT(A) failed to appreciate that the reference to seized materials was completely tangential as well as not relevant and hence ought to have appreciated that the assessment of rental income on the facts of the case was wrong, incorrect, erroneous, invalid, unjustified and not sustainable both on facts and in law.

8. The CIT(A) failed to appreciate that the search assessment completed in the hands of the Appellant u/s 153C of the Act was invalid and not sustainable in law and ought to have appreciated that the sustenance of levy of penalty in consequence to the invalid search assessment order should be considered as nullity in law.

9. The CIT(A) failed to appreciate that the order imposing penalty under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

:: 11 ::

10. The CIT(A) failed to appreciate that there was no proper opportunity given before passing of the impugned order as well as before passing the penalty order and any order passed in violation of the principles of natural justice would be nullity in law.

11. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

12. The brief facts of the case are that the assessee, Mr. S. Manoharan, is the Managing Director of M/s. Grambles Consultancy Services Pvt. Ltd., Coimbatore, has filed its return of income for the AY 2019-20 on 30.09.2019 admitting total income of Rs.88,39,440/-. A search u/s.132 of the Act, was conducted on 30.04.2019 on Mr. S. Martin, and his associated group cases. The business premise of M/s. Grambles Consultancy Services Pvt. Ltd., is one of the connected cases was also covered under the search operation. During the course of search, a statement u/s. 132(4) of the Act, was recorded from Mr. S. Manoharan, and questioned about certain incriminating material in the form of loose sheets. In response, he admitted that rental income received from certain properties was not disclosed in the return of income filed for the impugned assessment years. Consequent to search, the assessment has been completed u/s.143(3) of the Act, r.w.s.153C of the Act, on 04.03.2021 and determined total income of Rs.88,39,440/- by making addition towards undisclosed income of Rs.5,69,820/-.

13. Penalty proceedings u/s.270A of the Act, was initiated and called upon the assessee to explain 'as to why' penalty shall not be levied towards undisclosed income admitted in the course of search in a statement under sub-section (4) of Sec.132 of the Act. In response, the assessee submitted that additions made towards undisclosed income on

:: 12 ::

account of rental receipts **per-se** does not lead to a conclusion that there is an undisclosed income within the meaning of s.270AAB of the Act, which warrants levy of penalty. The AO, however, was not convinced with the explanation of the assessee and according to the AO, during the course of search, the assessee had admitted undisclosed income in the statement recorded u/s.132(4) of the Act, towards rental receipts. However, does not reported said income in the return of income filed for relevant to assessment year and also paid tax together with interest, if any, in respect of undisclosed income. Therefore, the AO opined that it is a fit case for levy of penalty u/s. 271AAB (1A)(b) of the Act, @60% and thus, levied penalty of Rs.5,69,820/-. The relevant findings of the AO are as under:

6.0. I have perused the submission made by the assessee. However, the contention of the assessee is not acceptable. The case laws referred by the assessee are different and not applicable in assessee's case. It is pertinent to mention here that the undisclosed income of Rs.9,49,700/- was disclosed during the course of search proceedings and admitted in the statements recorded u/s 132(4). Had the search not been taken place, the assessee would not have been admitted Rs.9,49,700/- in the name of the assessee. There was undisclosed income which was found only after verification of the seized material during the course of search. Further during the course of assessment proceedings the assessee accepted this fact and agreed for addition. Thus from the facts mentioned above, it is evident that the assessee has concealed income by not offering the entire undisclosed income which attracts the provisions penalty U/s 271AAB(1A) of the Act.

6.1 The provisions of section 271AAB have a scheduled structure in which different rates of penalty have been provided at different stages. The assessee has not paid the taxes due before filing of return of income. Thus the condition that the assessee should pay tax together with interest on the undisclosed income and furnish the return of income containing such undisclosed income before the specified date i.e the due date for filing return of income, in order to attract penalty at lower rates of 30% of the undisclosed income is not satisfied. The case therefore falls under Section 271AAB(1A)(b) which provides for levy of penalty at the rate of not less than 60%

7.0 As can be seen above, the assessee has not fulfilled all conditions as stated in clause 'a' of sub-section (1A) section 271AAB with respect to the amount of Rs.9,49,700/-. Accordingly, penalty of 60% of the undisclosed income i.e. 60% of Rs.9,49,700/- i.e. Rs.5,69,820/- is levied as per provision of clause 'b' of sub-section (1A) of Sec. 271AAB for A.Y 2019-20.

:: 13 ::

14. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee submitted that additions made towards rental income is on estimation basis without any reference to material found during the course of search in the possession of the assessee and thus, penalty u/s.271AAB of the Act, cannot be levied. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of various facts including by following the decision of the Hon'ble Supreme Court in the case of MAK Data (P) Ltd. v. CIT, reported in [2007] 161 Taxman 340 (SC), uphold the penalty levied by the AO u/s.271AAB of the Act. The relevant findings of the Ld. CIT(A) are as under:

4.2.1 I have considered the argument of the AR, facts of the case, assessment order and perused the material placed before me. As per the appellant, the AO made addition on estimated rental income based on the loose sheets recovered during the search and the appellant did not contest against this addition in appeal only with a view to purchase peace with the department. The appellant further submitted that, since the quantum addition itself was made on estimated basis therefore the penalty cannot be levied for misreporting of income derived on estimation.

4.2.2 The submission in support of the ground cannot be accepted as the appellant did not disclose the said rental income for taxation neither at the time of filing return of income u/s 139(1) nor in response to the notice u/s 153C of the act. Only during the course of search proceedings, the appellant accepted the rental income. Further, appellant's claim to purchase peace with department is an afterthought made by the appellant. Thus, it is very clear that the appellant's intention was not to disclose the income. Being not contesting the quantum addition in appeal forum does not show the co-operation view of the appellant and this cannot prevent the AO in levying the penalty u/s.270AAB for having undisclosed income found during the search.

The AO also relied upon the judgement of the Supreme Court of India in case of MAK Data (P) Ltd Vs. Commissioner of Income-tax-II reported in "MAK Data (P) ltd vs CIT(2007)161Taxman340(SC). The SC held in this decision that " The AO, in our view, shall not be carried away by the plea of the assesses like "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc to explain away Us conduct. The question is whether the assesses has offered any explanation for the concealment of particulars of income or furnishing inaccurate particulars of income ". In pursuant to the above decision of the Apex Court, appellant's argument cannot be accepted.

4.2.3 The appellant further submitted that the addition was made on estimate basis and heavily relied upon some case laws mentioned below:-

:: 14 ::

CIT v. Krishi Tyre Re-treading & Rubber Industries 2014 Tax Pub(DT) 0133 (Raj-HC) Assistant CIT v. Allied Construction 2007 TaxPub(DT) 0115 (Del-Trib) Harigopal Singh v. CIT 2002 Taxpub(DT) 1625 (P & H-HC)

On perusal of above-mentioned case-laws it was found that these are not relevant to the appellant case. In these decisions the penalty u/s.271(1)(c) for concealment of income was deleted by Hon'ble Courts and Tribunals where addition was made on estimation on total turnover or gross profit of the business. In the appellant's case the addition was made under the head "income form house property" on the basis of extracts of the cash books which were seized during the search at Kolkata and Coimbatore containing details of unaccounted cash receipts and payments. In addition to this, section 23 of the act also gives a formula to determine the "Annual Value" of the property. In my considered view, this addition was not made on estimate basis. Thus, these case laws are not relevant to this case. The appellant failed on this ground. Therefore, I do not find any reason to interfere in penalty order of the AO. Hence, the penalty levied by the AO is confirmed.

15. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) erred in sustaining penalty levied by the AO u/s.271AAB of the Act, without appreciating the fact that the penalty u/s.271AAB of the Act, is not automatic and the AO must satisfy that there is an undisclosed income, which has not been recorded in the books of accounts of the assessee before the date of search. In this case, additions made by the AO towards rental receipts as undisclosed income is not based on any incriminating material found during the course of search in the possession of the AO. Further, estimated income towards rental receipt cannot be treated as undisclosed income. Thus, for the purpose of sec.271AAB of the Act, there must be two conditions for levy of penalty, as per which, there should be an undisclosed income and further, such income has not been recorded in the books of accounts of the assessee prior to the date of search. In this case, for assessment year in question, the date of filing of return has not been expired as on the date of search and thus, it cannot be said that rental income received by the assessee has not been recorded in the books of accounts.

:: 15 ::

16. The Ld. DR, on the other hand, supporting the order of the Ld. CIT(A), submitted that addition towards undisclosed income is not on estimation basis which is evident from the fact that although, the assessee purchased property in FY 2009-10, but rental income was not offered to tax in the return of income filed for the relevant to assessment year. Further, even for these two assessment years, the assessee would not have been declared rental income, had search was not taken place. Therefore, the AO has rightly invoked provisions of Sec.271AAB of the Act, and levied penalty.

17. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. As per provisions of Sec.271AAB(1A)(b) of the Act, the AO may direct that in a case, where search has been initiated u/s.132 of the Act, on or after the date on which the Taxation Laws (Second Amendment) Bill, 2016, receives the assent of the President, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, @30% of the undisclosed income of the specified previous year, if the assessee -

(i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived.

(ii) substantiates the manner in which the undisclosed income was derived; and

(iii) on or before the specified date—

(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

In this case, the assessment year involved is specified previous year and provisions of sub-section (1A) of Sec.271AAB of the Act, is applicable. Therefore, it is necessary to examine the case of the assessee, in light of

:: 16 ::

penalty levied by the AO under sub-section (1A) of sec.271AAB of the Act. The AO has levied penalty on account of additions towards rental receipts, which was not disclosed in the return of income filed for relevant assessment years. According to the AO, if search has not been taken place, the assessee would not have disclosed rental receipts in the return of income filed for the relevant to assessment year. Therefore, the AO opined that addition made towards rental receipts as undisclosed income comes under the provisions of sub-section (1A) of section 271AAB of the Act, because, the assessee has admitted undisclosed income in a statement recorded u/s.132(4) of the Act, and also specifies the manner in which such income has been derived. But, not paid tax together with interest in respect of undisclosed income and furnishes the return of income in the specified previous year on such undisclosed income on or before the specified date.

18. We find that the assessee has admitted undisclosed income in a statement recorded u/s.132(4) of the Act, towards rental receipts received from two properties. No doubt, rental receipts from said properties has not been declared to Income Tax even for earlier assessment years, but facts remain that due date for filing return of income for the AYs 2019-20 & 2020-21 has not been expired on the date of search i.e. 30.04.2019, because, the due date for filing return of income u/s. 139(1) of the Act, for the AY 2019-20 expires on 31.07.2019 and for the AY 2020-21 expires on 31.07.2020. Therefore, when the due

:: 17 ::

date for furnishing return of income was not expired as on the date of search, it cannot be said that rental income received from properties has not been disclosed for the purpose of tax before the date of search, more particularly, in respect of rental receipts. Because, had it been a case of the AO, undisclosed income offered pertains to any income or expenditure with respect to business and the assessee has maintained books of accounts for such business, but not disclosed such undisclosed income in the books of accounts maintained for that assessment year before date of search, then definitely it can be said that rental receipts is in the nature of undisclosed income. But, in respect of rental income, the question of recording such receipts in the books of accounts does not arise, if the assessee does not maintained books of accounts for relevant to assessment year. Therefore, the findings recorded by the AO that the assessee would not have disclosed the rental income, had the search not been taken place, are only apprehension, but not based on relevant facts. Therefore, we are of the considered view that the AO is erred in levying penalty u/s.271AAB of the Act, towards addition made on rental receipts as undisclosed income, because, the assessee would have disclosed said rental receipts in the return of income to be filed for the relevant to AYs 2019-20 & 2020-21 when he has filed return of income. Since, as on the date of search, the due date for filing of return of income for those two assessment years was not expired, the AO cannot come to the conclusion that the assessee would not have disclosed such rental receipts for tax,

:: 18 ::

had search has not been taken place. Therefore, we are of the considered view that the AO is erred in levying penalty u/s.271AAB of the Act, for the AYs 2019-20 & 2020-21. The Ld. CIT(A) without appreciating the fact simply confirmed the penalty levied by the Assessing Officer. Thus, we set aside the order of the Ld. CIT(A) and direct the AO to delete penalty levied u/s.271AAB of the Act, for the AYs 2019-20 & 2020-21.

19. In the result, appeals filed by the assessee in ITA Nos.618 & 619/Chny/2022 for the AYs 2019-20 & 2020-21 are allowed.

20. In the result, appeals filed by the assessee in ITA Nos.616 & 617/Chny/2022 for the AYs 2017-18 & 2018-19 are dismissed, and appeals filed by the assessee in ITA Nos.618 & 619/Chny/2022 for the AYs 2019-20 & 2020-21 are allowed.

Order pronounced on the 28th day of February, 2023, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 28th February, 2023.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकरआयुक्त (अपील)/CIT(A)

Sd/-

(मंजूनाथा. जी)

(MANJUNATHA.G)

लेखासदस्य/**ACCOUNTANT MEMBER**

4. आयकरआयुक्त/CIT

5. विभागीयप्रतिनिधि/DR

6. गार्डफाईल/GF