

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

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री मंजूनाथा.जी, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA.G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1603/Chny/2019
निर्धारण वर्ष /Assessment Year: 2014-15

M/s.SM Feeds & Farms (India)-
Pvt. Ltd.,
"Lucky Building", No.938, 12th
Central Cross Street,
MKB Nagar,
Vyasarpadi,
Chennai-600 039.
[PAN: AANCS 2321 N]
(अपीलार्थी/Appellant)

v. The Asst. Commissioner-
of Income Tax,
Corporate Circle-6(2),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.K.Ravi, Adv.

प्रत्यर्थी की ओर से /Respondent by : Mr. AR.V.Sreenivasan,
Addl.CIT

सुनवाई की तारीख/Date of Hearing : 09.03.2023

घोषणा की तारीख /Date of Pronouncement : 31.03.2023

आदेश / ORDER

PER MANJUNATHA.G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-15, Chennai, dated 22.03.2019, and pertains to assessment year 2014-15.

2. The assessee has raised the following grounds of appeal:

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- 1. The Order of the Learned Commissioner of Income Tax (Appeals) is contrary to the law, facts and circumstances of the case.*
- 2. The Commissioner of Income Tax (Appeals) erred in holding that the appellant could not demonstrate that the bogus purchase and sale entries were removed from the books of accounts without giving sufficient opportunity to the appellant.*
- 3. The Commissioner of Income Tax (Appeals) erred in not adjudicating the grounds challenging the notice u/s.274 r.w.s. 271(1)(c) and the levy of penalty for concealment as well as for furnishing of inaccurate particulars, when satisfaction was recorded only for concealment of income.*
- 4. The Commissioner of Income Tax (Appeals) erred in relying on the order of the ITAT in the quantum proceedings and failed to take into account the errors cited by the appellant in the assessment order.*
- 5. A particular act of an assessee, would constitute either concealment of particulars of income or furnishing of inaccurate particulars of income. If penalty is levied for both concealment of particulars of income as well as for furnishing of inaccurate particulars of income, the assessing officer has to give separate finding on what constitutes concealment of particulars of income and what constitutes furnishing of inaccurate particulars of income. The assessing officer as well as Commissioner of Income Tax (Appeals) has ignored this aspect.*
- 6. The Commissioner of Income Tax (Appeals) erred in upholding the penalty u/s.271(1)(c) without appreciating that the order levying penalty- was vague as it did not indicate whether it is for concealment of particulars of income or for furnishing of inaccurate particulars of income.*
- 7. Penalty u/s.271(1)(c) cannot be sustained based on estimates made by the assessing officer.*
- 8. For these and such other grounds that may be permitted to be raised during the hearing of the appeal.*

3. The brief facts of the case are that the assessee is a Private Ltd. Co., engaged in the business of manufacturing of Poultry Feed and Rearing and Marketing of Chicks. A survey u/s.133A of the Income Tax Act, 1961 (in short "the Act") was conducted in the premises of the assessee on 23.01.2013. During the course of survey, it was noticed that purchases were booked in the name of non-existing entities. A statement was recorded from the Managing Director of the assessee company, wherein, he had mentioned that such purchases from non-existing entities are matched by the equal amount of sales to non-existing entities. He further

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mentioned that such a course was carried out to maintain the credit facilities with its bankers, otherwise, there would have been a liquidity crunch. Consequent to survey, the assessment for the AY 2014-15 was completed u/s.143(3) of the Act, on 29.12.2016 and determined total income of Rs.6,25,12,430/- where the AO has estimated 5.5% gross profit on total sales turnover. The assessee challenged the assessment order before the First Appellate Authority, but could not succeed. The assessee preferred further appeal against the order of the Ld.CIT(A) before the Tribunal and the Tribunal upheld estimation of 5.5% gross profit on total turnover. Subsequently, penalty proceedings u/s.271(1)(c) of the Act, has been initiated by issuing notice u/s.274 r.w.s.271(1)(c) of the Act, dated 30.12.2016. In response, the assessee has submitted that mere estimation of income does not **per se** attracts provisions of Sec.271(1)(c) of the Act. The AO after considering relevant submissions of the assessee and also taken note of additions made towards estimation of profit has been upheld by the Tribunal, levied penalty of Rs.2,06,30,000/- u/s.271(1)(c) of the Act, for concealment of particulars of income. 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 appellate order dated 22.03.2019 sustained the additions made by the AO towards levy of penalty u/s.271(1)(c) of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

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4. The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in not adjudicating the grounds challenging the notice u/s.274 r.w.s.271(1)(c) of the Act, and levy of penalty for concealment of income as well as for furnishing inaccurate particulars when satisfaction was recorded only for concealment of income.

5. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the AO has levied penalty on estimation of profit from total turnover on the basis of findings of survey which reveals that the assessee was booking bogus purchases. He further submitted that on the issue of legality, notice issued by the AO and consequent proceedings, the matter may be set aside to the file of the Ld.CIT(A) for adjudication.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. Although, the assessee has taken a specific ground on the issue of notice u/s.274 r.w.s.271(1)(c) of the Act, and challenged the proceeding in light of certain judicial precedents, but, the Ld.CIT(A) has disposed off appeal on merits without any speaking order which is evident from the fact that the Ld.CIT(A) has simply reproduced findings of the Tribunal in quantum appeal order and sustained additions made towards penalty u/s.271(1)(c) of the Act. Therefore, we are of the considered view that the matter needs to go back to the file of the Ld.CIT(A) for adjudication of specific ground taken by the assessee on validity of notice issued u/s.274 r.w.s.271(1)(c) of the Act, and then, decide the issue on merits in light of various reasons given

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by the AO for levy of penalty. Therefore, we set aside the order of the Ld.CIT(A) and remitted the matter back to the file of the Ld.CIT(A) for fresh consideration including adjudication of specific ground taken by the assessee on validity of notice issued u/s.274 r.w.s.271(1)(c) of the Act.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 31st day of March, 2023, in Chennai.

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

Sd/-
(मंजूनाथा.जी)
(MANJUNATHA.G)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 31st March, 2023.
TLN

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

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