

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
**Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member**

आयकर अपील सं./I.T.A. No. 728/Chny/2023
निर्धारण वर्ष/Assessment Year: 2011-12

Edward Sam,
4/189, Priyanka Nagar,
Kattur Post, Trichy 620 019.

Vs. The Income Tax Officer,
Ward -2(2),
Trichy.

[PAN:AAAPE2757N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Girish Kumar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT
सुनवाई की तारीख/ Date of hearing : 26.07.2023
घोषणा की तारीख /Date of Pronouncement : 28.07.2023

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi dated 29.04.2023 for the assessment year 2011-12.

2. Brief facts of the case are that the assessee is a retired employee of BHEL and filed his return of income for the assessment year 2011-12 on 06.07.2011 admitting an income of ₹.5,92,178/- after deducting house property loss of ₹.53,981/-. The case has been selected for scrutiny since

the assessee had a cash deposit of ₹.27,31,700/- in BHEL Employees Co-operative Bank Ltd., Trichy. After considering the submissions and details against statutory notices, the Assessing Officer has completed the assessment under section 143(3) of the Act dated 27.02.2014 assessing total income of the assessee at ₹.29,92,180/- by making addition of ₹.25,00,000/- under section 69A of the Act. Against the quantum addition, the assessee had preferred an Appeal before the Id. CIT(A). After considering the submissions of the assessee, the Id. CIT(A) partly allowed the appeal of the assessee by sustaining the addition to the extent of ₹.9,73,250/- as peak credit and ₹.3,00,000/- as personal cash consumption and directed to recompute the income.

3. Subsequently, the Assessing Officer has initiated penalty proceedings under section 271(1)(c) of the Act by issuing a letter on 16.10.2019 seeking explanation from the assessee as to why a penalty shall not be levied. Since the assessee could not respond to the notice, based on the details, the Assessing Officer levied penalty of ₹.3,95,137/- under section 271(1)(c) of the Act. On appeal, the Id. CIT(A) confirmed the penalty levied under section 271(1)(c) of the Act.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that against quantum

addition, by applying peak credit theory, the Id. CIT(A) has granted relief on estimated basis based on the details furnished by the assessee and therefore, provisions under section 271(1)(c) of the Act has no application and prayed for deleting the penalty levied by the Assessing Officer and confirmed by the Id. CIT(A).

5. On the other hand, the Id. DR has supported the orders of authorities below.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. During the course of assessment proceedings, the Assessing Officer noted that the assessee had a cash credit of ₹.25,00,000/- with BHEL Employees Cooperative Bank account and such credit was made on 03.02.2011, 04.02.2011, 08.02.2011 & 10.02.2011. Since the assessee has not offered any convincing explanation, the Assessing Officer added the entire sum of credit in the BHEL Employees Cooperative Bank account of ₹.25,00,000/- under section 69A of the Act. On appeal, by restricting the addition to the extent of ₹.12,73,250/-, the Id.CIT(A) added the peak credit of ₹.9,73,250/- to the declared income and moreover granted relief of ₹.3,00,000/- being personal and house hold expenses, which was accepted by the assessee and no further appeal was preferred against

the order of the Id. CIT(A). However, the Assessing Officer initiated penalty proceedings and levied penalty under section 271(1)(c) of the Act, which was confirmed by the Id. CIT(A).

6.1 Before us, the Id. Counsel for the assessee has contended that by applying peak credit theory, the Id. CIT(A) has granted relief on estimated basis based on the details furnished by the assessee and therefore, there was no concealment of income or furnishing of inaccurate particulars and thus, the provisions of section 271(1)(c) of the Act has no application. We find force in the argument of the Id. Counsel. Against the quantum addition, once the Id. CIT(A) has determined the unexplained cash credit by considering the peak credit amount deposited, which is nothing but an estimated credit, the Assessing Officer was not legally and factually correct to levy penalty under section 271(1)(c) of the Act. Accordingly, the penalty levied under section 271(1)(c) of the Act stands deleted.

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

Order pronounced on 28th July, 2023 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 28.07.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.