

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **1533/CHNY/2023**

निर्धारण वर्ष/Assessment Year: 2016-17

Shri Anandkumar Salooja,
385, Kumbakonam Jewellers,
Bazaar Street, Salem Town,
Salem – 636 001.

**The Deputy Commissioner
of Income Tax,**
Vs. Circle 1(1),
Salem.

PAN: AXOPS 0298K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri G. Baskar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 16.04.2024

घोषणा की तारीख/Date of Pronouncement

: 18.04.2024

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2023-24/1058367382(1) dated 30.11.2023. The assessment was framed by the Addl./Joint/Deputy/Asst. Commissioner of Income Tax/Income Tax Officer, National Faceless Assessment Centre, Delhi for the assessment year 2016-17 u/s.147 r.w.s.144B of the Income

Tax Act, 1961 (hereinafter the 'Act') vide order dated 20.09.2021. The impugned penalty under section 271(1)(c) of the Act was levied by the Addl./Joint/Deputy/Asst. Commissioner of Income Tax/Income Tax Officer, National Faceless Assessment Centre, Delhi vide order dated 17.03.2022.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in levying penalty u/s.271(1)(c) of the Act. For this, assessee has raised various grounds which are argumentative or exhaustive or factual, hence need not be reproduced.

3. Brief facts are that the assessee is a partner of the firm M/s. ANS Gupta Jewels, Salem and filed his original return of income for the relevant assessment year 2016-17 under the provisions of section 44AD of the Act and disclosed net profit @ 8% of gross receipts. The AO while framing assessment u/s.147 r.w.s. 144B of the Act noted that the assessee has not entered into any trade nor rendered any service, merely received remuneration and interest on capitals from partnership firm. According to AO, the partnership firm has already debited the remuneration and interest on capitals in the profit & loss account and hence, the remuneration and interest on capitals cannot be considered as turnover or gross receipts.

Accordingly, he added this remuneration and interest on capitals claimed to have been gross receipts and added to the returned income of the assessee amounting to Rs.12,08,900/-. This quantum addition was not challenged by assessee before CIT(A) and it has become final. The AO while framing assessment initiated penalty proceedings u/s.271(1)(c) of the Act for furnishing of inaccurate particulars of income and for concealment of particulars of income. The AO noted that the assessee has concealed the income to the extent of Rs.12,08,900/- by declaring the remuneration and interest on capital as gross receipts and declared the same u/s.44AD of the Act and claimed to have been earned profit @ 8%. The AO noted that the assessee ought to have declared the same as business income instead declared u/s.44AD of the Act, which he did only to evade tax on interest and remuneration from the firm. The AO noted that this issue was detected during assessment proceedings and he has not declared the income on his own but after detection it was declared and paid taxes. According to AO, on detection of the concealment of income, the assessee filed revised statement of income to escape the clutches of law and the claim of assessee is not a bonafide claim. Accordingly, he levied penalty @ 100% to the extent of Rs.3,43,666/-. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) also confirmed the penalty by following the decisions of Hon'ble Supreme Court in the case of Union of India vs. Dharmendra Textile Processors & Ors., reported in 306 ITR 277 and the Hon'ble Delhi High Court in the case of CIT vs. Zoom Communication Pvt. Ltd., reported in 233 CTR Reports (Del) 465, 2010. Aggrieved, assessee preferred appeal before the Tribunal.

5. Before us, the Id.counsel for the assessee admitted the facts but only made one argument that the assessee before conclusion of assessment admitted the income claimed to have been gross receipts on account of remuneration and interest on capitals invested with the firm and paid taxes as per law. The AO on the basis of revised computation framed assessment. The Id. counsel before us contended that the crux of the issue involved is whether income was concealed as such or whether it furnished inaccurate particulars of income because all the particulars were available before the AO along with the return of income originally filed. The Id. counsel for the assessee stated that 8% income was admitted on correct amount of interest and remuneration. The Id. counsel stated that there is no scope to detect anything because gross amount on account of remuneration and interest on capitals received from firm was available on record of the Department in term of return of

income filed by assessee and hence, there cannot be any case of furnishing of inaccurate particulars of income or levy of penalty. The Id. counsel for the assessee argued that it is not possible to construe the original return alone in isolation without reference to the assessee's conduct of filing of revised statement of income before conclusion of assessment and all the facts and circumstances commencing with the filing of original return and ending with the assessment shall be taken as relevant for considering assessee's liability for penalty u/s.271(1)(c) of the Act.

6. On the other hand, the Id. Senior DR however contested the claim of assessee and stated that the assessee has concealed the particulars of income by declaring remuneration and interest on capitals received from firm as gross receipt. The Id. Senior DR argued that this is a fit case for levy of penalty because the assessee from earlier years claiming the same and as relied on by Id. counsel for the assessee the decision of Hon'ble High Court of Madras in the case of Anandkumar vs. CIT reported in [2021] 430 ITR 391, which is against assessee and laid down the principle that the assessee cannot claim the remuneration and interest on capital received from firm as gross receipts for the purpose of provisions of section 44AD of the Act. He stated that the assessee has intentionally concealed

particulars of income just to evade tax and this is a fit case for levy of penalty as levied by the AO and confirmed by the CIT(A) and hence, he opposed deletion of penalty.

7. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the facts are admitted and there is no dispute about the same. Admittedly, the assessee has filed information in the return of income in regard to remuneration and interest on capitals received from the partnership firm M/s. ANS Gupta Jewels as partner. This fact is disclosed by assessee in its original return of income and original return of income was processed u/s.143(1) of the Act but assessee claimed these two items i.e., remuneration received as a partnership firm and interest on capital receipt from partnership firm on presumptive basis u/s.44AD of the Act and declared net profit @ 8%. We agree with the argument of Id. Senior DR that the assessee cannot make such claim and this is not allowable and this position has been clarified by the Hon'ble High Court of Madras in the case of Anandkumar, *supra*. But, we noted that all the facts relating to these two claims made by assessee are available before the AO and even the AO processed the original return and accepted the claim, which may be wrong. We have gone through the decision of Hon'ble Supreme Court in the

case of CIT vs. Reliance Petroproducts Ltd., reported in [2010] 322 ITR 158, wherein the Hon'ble Supreme Court has propounded "*the meaning of the term 'particulars' used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate 'particulars'. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate 'particulars'.*"

7.1 We noted that the Hon'ble Madhya Pradesh High Court in the case of CIT vs. Kishan Chand Tara Chand reported in [1993] 151 Taxation 72 (MP) has considered that where the assessee has disclosed all the facts relating to a transaction but has not included the resultant income in its return on the bonafide belief that such income was eligible for exemption or deduction or taxable, from the mere fact that the claim of the assessee has been negated by the AO, it does not amount to concealment of income or furnishing of inaccurate particulars of income by the assessee. In the present case before us also, the assessee has disclosed complete particulars of income relating to remuneration received from firm and interest

on capital invested with the firm. Once this is a fact, it means that there is no issue as regards to concealment of particulars of income.

7.2 In the given facts and circumstances, we are of the view that in the present case, the particulars are declared by assessee in his return of income and the assessee has only claimed those items as business receipts instead of declaring it as profit on gross basis. Going by the ratio laid down by Hon'ble Supreme court in the case of Reliance Petroproducts Ltd., *supra*, we are of the view that this is not a fit case levy of penalty u/s.271(1)(c) of the Act. There is no concealment of particulars of income or new evidences found by the AO for making any kind of addition. Hence, we delete the penalty and allow the appeal of assessee.

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

Order pronounced in the open court on 18th April, 2024 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 18th April, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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