

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

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुकला, लेखा सदस्य के समक्ष  
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER  
आयकर अपील सं./ITA Nos.1337/Chny/2023 & ITA Nos.1340/Chny/2023  
निर्धारण वर्ष /Assessment Years: 2018-19 & AY-2019-20

Shri Chenniappan Ramadurai,  
No.56, NMS Compound, Erode,  
Tamil Nadu-638001.  
[PAN: AELPR2706M]

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

And  
ITA Nos.1343/Chny/2023 for AY 2019-20

Smt. Ramadurai Amutha,  
No.56, NMS Compound, Erode,  
Tamil Nadu-638001.  
[PAN: AFVPA4816L]

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

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.S.Sridhar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri ARV Srinivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 30.05.2024

घोषणा की तारीख /Date of Pronouncement

: 12.06.2024

**आदेश / ORDER**

**PER AMITABH SHUKLA, A.M :**

In its opening arguments, the Ld.AR of the appellant informed that ITA Nos.1337/Chny/2023 & ITA Nos.1340/Chny/2023 for Assessment Years 2018-19 & AY-2019-20 respectively and ITA Nos.1343/Chny/2023 for AY 2019-20 are having common issues and disputes and therefore the impugned appeals are adjudicated together.

**ITA Nos.1337/Chny/2023**

This appeal is filed against the order bearing DIN & Order No.ITBA/APL/M/250/2023-24/1056407395(1) dated 22.09.2023 of Ld.CIT(A) 19, Chennai. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 22.09.2023 passed by Ld.CIT(A) 19, Chennai.

2.0 It is seen from records that there is delay of 01 day in filing of this appeal. The assessee has submitted that it was on account of delay in handing over papers to the authorized representatives. Evidences brought on record allude that there is sufficient force in the assessee's arguments. It is trite law that no appellant gains by delaying its petition for redressal of its grievances. The delay in filing the appeal is therefore condoned and the appeal is being adjudicated as under.

3.0 Aggrieved by the aforesaid order dated 22.09.2023, the assessee has raised grounds of appeal 1 to 5

4.0 Ground of appeal no.1 & 2 is general in nature and hence bereft of any adjudication.

5.0 Ground of appeal no.3 to 5 are regarding imposition of penalty u/s 270A of the Act vide order dated 16.03.2022. The AO noted that a Survey u/s 133A of the Act was conducted upon the assessee engaged in the business of whole sale and retail trading of textiles on 28.06.2020.

Consequent to the survey incriminating documents indicating suppression of sales was noted. The case of the assessee was reopened u/s 147 r.w.s 148 of the Act. The assessing officer considering undisclosed sales turnover of Rs.2,09,25,334/- proceeded to make additions to the returned income. As per para-4 of the impugned penalty order the assessee did not respond to the show cause notices issued by the AO. Consequently from the material available on record the AO concluded that the assessee was liable for payment of penalty u/s 270A of the Act. The AO noted that the assessee had offered undisclosed income detected during the course of survey but failed to disclose the same in the subsequent return of income filed in response to notice u/s. 148 for AY-2018-19 and thus following under the mischief of provisions of section 270A stipulating under reporting of income in consequence of misreporting. Accordingly, the imposed penalty of Rs.9,53,191/- being 200% of the tax payable as mandated u/s 270A(8).

6.0 Before the Ld.CIT(A) the assessee pleaded that the penalty was not leviable on various accounts, inter-alia, including the fact that non-processing of returned filed u/s148 was not processed u/s 148(1), addition made by the AO on estimate basis, applicability of provisions of section 270A(6) etc.

7.0 The Ld.CIT(A) dismissed the appeal of the assessee through her speaking order by effectively analyzing the facts of the case in light of extant statutory provisions, judicial pronouncements on the matter and concluded that the arguments put forth by the appellant were not satisfactory. Accordingly, she sustained the order of the AO.

8.0 The Ld.AR vehemently argued in that the Ld.CIT(A) has wrongly sustained the order of the assessing officer. In support of his contentions, the assessee reiterated the arguments taken before the first appellate authority. The Ld.AR also stated that the penalty notice dated 18.09.2021 issued by the AO did not specify as to under which sub-clauses from (a) to (f) of section 270A(9) did its case fall and therefore the notice per se was invalid and no penalty order can sustain from an invalid penalty notice.

9.0 The Ld.DR placed reliance upon the order of the Assessing Officer and Ld.CIT(A). It was submitted that the order of lower authorities is based upon correct understanding of the facts. The Ld.DR also submitted that no infirmity has been caused by the AO by not mentioning a specific sub-clause of section 270A(9) since the rate of penalty of 200% is applicable to all the six sub-clauses from (a) to (f) of section 270A(9).

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10.0 We have heard rival submission in the light of facts of the case and material brought on records. It is an undisputed fact of this case that the penalty u/s 270A has been levied on an amount of income which was not disclosed by the assessee and which had come to the notice of the department only upon conducting survey proceedings u/s 133A. It is also an undisputed fact of the case that the assessee had, by way of his sworn statement admitted concealment of income and had offered the same for taxation.

Before proceeding further it is considered necessary to examine the provisions of section 270A reproduced hereunder:

**270A. Penalty for under-reporting and misreporting of income.**—(1) *The Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income. (2) A person shall be considered to have under-reported his income, if— (a) the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143; (b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished; (c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment; (d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143; (e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed; (f) the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment; (g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income. (3) The amount of under-reported income shall be,— (i) in a case where income has been assessed for the first time,— (a) if return has been furnished, the difference between the amount of income assessed and the amount of income determined under clause (a) of sub-section (1) of section 143; (b) in a case where no return has been furnished,— (A) the amount of income assessed, in the case of a company, firm or local authority; and (B) the difference between the amount of income assessed and the maximum amount not chargeable to tax, in a case not covered in item (A);*

*1. Ins. by Act 28 of 2016, s. 98 (w.e.f. 1-4-2017). 763*

*(ii) in any other case, the difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order:*

*Provided that where under-reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB or section 115JC, the amount of total under-reported income shall be determined in accordance with the following formula—*

$(A - B) + (C - D)$

*where,*

*A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);*

*B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under-reported income;*

*C = the total income assessed as per the provisions contained in section 115JB or section 115JC;*

*D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under-reported income:*

*Provided further that where the amount of under-reported income on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.*

*Explanation.—For the purposes of this section,—*

*(a) —preceding order<sup>1</sup> means an order immediately preceding the order during the course of which the penalty under sub-section (1) has been initiated;*

*(b) in a case where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income, the amount of under-reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.*

*(4) Subject to the provisions of sub-section (6), where the source of any receipt, deposit or investment in any assessment year is claimed to be an amount added to income or deducted while computing loss, as the case may be, in the assessment of such person in any year prior to the assessment year in which such receipt, deposit or investment appears (hereinafter referred to as —preceding year<sup>1</sup>) and no penalty was levied for such preceding year, then, the under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.*

*(5) The amount referred to in sub-section (4) shall be deemed to be amount of income under-reported for the preceding year in the following order—*

*(a) the preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and*

*(b) where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.*

*(6) The under-reported income, for the purposes of this section, shall not include the following, namely:—*

*(a) the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered;*

*(b) the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, but the method employed is such that the income cannot properly be deduced therefrom;*

*(c) the amount of under-reported income determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance;*

*(d) the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer, where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction; and*

*(e) the amount of undisclosed income referred to in section 271AAB.*

*(7) The penalty referred to in sub-section (1) shall be a sum equal to fifty per cent of the amount of tax payable on under-reported income.*

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*(8) Notwithstanding anything contained in sub-section (6) or sub-section (7), where under-reported income is in consequence of any misreporting thereof by any person, the penalty referred to in sub-section (1) shall be equal to two hundred per cent of the amount of tax payable on under-reported income.*

*(9) The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:—*

*(a) misrepresentation or suppression of facts;*

*(b) failure to record investments in the books of account;*

*(c) claim of expenditure not substantiated by any evidence;*

*(d) recording of any false entry in the books of account;*

*(e) failure to record any receipt in books of account having a bearing on total income; and*

*(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.*

*(10) The tax payable in respect of the under-reported income shall be—*

*(a) where no return of income has been furnished and the income has been assessed for the first time, the amount of tax calculated on the under-reported income as increased by the maximum amount not chargeable to tax as if it were the total income;*

11.0 It transpires therefrom that section 270A(9) sub-clauses from (a) to (f) mandate levy of penalty for misreporting of income and section 270A(8) provides for levy of 200% penalty on the tax payable on the underreported income. Facts of the present case allude that exclusions provided in section 270A(6) are not applicable to the assessee.

12.0 Consequently a conclusion of non-applicability of penal provisions of section 270A, in this case, cannot be drawn. We therefore hold that penal provisions of section 270A are clearly attracted in this case and to the extent, the order of the Ld.CIT(A) is based upon correct understanding of the facts of the case. Accordingly, the order of the Ld.CIT(A) is sustained and the grounds of appeal raised Nos. 3 to 5 are dismissed.

13.0 In the result the appeal is dismissed.

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ITA Nos.1340/Chny/2023 for Assessment Years A.Y-2019-20 in the case Shri Chenniappan Ramadurai, [PAN: AELPR2706M] and ITA Nos.1343/Chny/2023 for AY 2019-20 in the case of Smt. Ramadurai Amutha, [PAN: AFVPA4816L]

14.0 As discussed above, the facts of case in the above mentioned appeals were reported by the Ld.AR to be identical to the one in ITA Nos.1343/Chny/2023 for Assessment Years A.Y-2018-19 in the case Shri Chenniappan Ramadurai, [PAN: AELPR2706M]. Accordingly, the decision taken therein follows in these appeals as well.

15.0 In the result the appeal for impugned ITA Nos.1340 & 1343 are also dismissed.

*Order pronounced on 12<sup>th</sup> June, 2024 at Chennai.*

**Sd/-**

(यस यस विश्वनेत्र रवि)

**(SS Viswanethra Ravi)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

(श्री अमिताभ शुक्ला)

**(Amitabh Shukla)**

लेखा सदस्य / **Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 12th June, 2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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