

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

महनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
महनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं. ITA No.464/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2015-16)

M/s. Anjappar Chettinad A/c Restaurant #7/2, J.P.Towers, Nungambakkam High Road, Nungambakkam, Chennai-600 034.	बनम/ Vs.	DCIT Central Circle-1(3) Chennai
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAIFA-0590-K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	S/Shri V.Padmanabhan & Venkata Raman (CAs)- Ld.ARs
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri AR V Sreenivasan (Addl.CIT)-Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	19-06-2024
घोषणा की तारीख / Date of Pronouncement	:	24-06-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2015-16 arises out of an order of learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] dated 29-12-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 153A on 05-03-2022. The sole grievance of the assessee is confirmation of penalty u/s 271(1)(c) for Rs.1.92 Lacs. Having heard rival submissions, the appeal is

disposed-off as under. The Ld. AR has submitted that returned income has been accepted by the revenue and therefore, no penalty could be levied in terms of decision of Hon'ble High Court of Delhi in the case of **Neeraj Jindal (79 Taxmann.com 96)** which has been considered by Hon'ble High Court of Madras in the case of **R.P. Darrmalingam (CRL O.P.No.28572 of 2018 & Crl. M.P.No.16630 of 2018 dated 09-11-2023)**. A copy of the decisions has been placed on record.

2. It could be noted that pursuant to search action on assessee group, a notice u/s 153A was issued to the assessee on 18-10-2019. In response, the assessee admitted income of Rs.86.75 Lacs which was accepted by Ld. AO in the assessment order. However, since regular return was filed u/s 139 admitting income of Rs.80.53 Lacs, Ld. AO proceeded to levy impugned penalty on the assessee on the additional income offered by the assessee. Finally, Ld. AO levied penalty of Rs.1.92 Lacs u/s 271(1)(c) vide order 26-09-2022. The Ld. CIT(A) in para 8.3 of impugned order, confirmed the same against which the assessee is in further appeal before us.

3. From the facts, it is quite clear that returned income as filed by the assessee has been accepted by Ld.AO. The only reason to levy penalty is that such income is more than income previously reported by the assessee in original return of income. Nevertheless, the concealment of income has to be in the return of income filed by the assessee which fact is absent in the present case. The assessed income is nothing but returned income. Therefore, no case of concealment of income could be made out against the assessee. Our view is duly supported by the cited decision of Hon'ble High Court of Delhi in the case of **Neeraj Jindal (supra)**. The Hon'ble Court, in para-21 of the decision, held that when

Ld. AO accepted the revised return filed by the assessee u/s 153A, no occasion arises to refer to the previous return filed u/s 139 of the Act. For all purposes, including for the purpose of levying penalty under Section 271(1)(c) of the Act, the return that has to be looked at is the one filed under Section 153A. In fact, the second proviso to Section 153A(1) provides that "assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this sub-section pending on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate." What is clear from this is that Section 153A is in the nature of a second chance given to the assessee, which incidentally gives him an opportunity to make good omission, if any, in the original return. Once the A.O. accepts the revised return filed under Section 153A, the original return under Section 139 abates and becomes non-est. Now, it is trite to say that the "concealment" has to be seen with reference to the return that it is filed by the assessee. Thus, for the purpose of levying penalty under Section 271(1)(c), what has to be seen is whether there is any concealment in the return filed by the assessee under Section 153A, and not vis-a vis the original return under Section 139. The ratio of this decision has been considered by Hon'ble High Court of Madras in the case of **R.P. Darrmalingam (supra)**. In para 14 & 15 of this decision, the Hon'ble court has accepted the ratio of this decision. Therefore, by deleting the impugned penalty, we allow the appeal of the assessee.

4. The appeal stand allowed.

Order pronounced on 24th June, 2024

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 24-06-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF