

आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ ITA No.115/Chny/2021
(निर्धारण वर्ष / Assessment Year: 2012-13)

Shri R.V.Raajah #97/2A, Harini Avenue, Velachery Main Road, Guindy, Chennai-600 032.	बनाम/ Vs.	ACIT Central Circle-3(2) Chennai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ADNPR-4751-R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri R. Subramanian (CA) - Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Ms.R. Anita (Addl.CIT) - Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	29-08-2024
घोषणाकीतारीख / Date of Pronouncement	:	18-11-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aggrieved by levy of penalty u/s 271(1)(c) for Rs.30.88 Lacs for Assessment Year (AY) 2012-13, the assessee is in further appeal before us. The impugned order has been passed by learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] on 24-03-2021 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 153A r.w.s. 144 of the Act on 06-03-2019. Having heard rival submissions, the appeal is disposed-off as under.

2.1 It emerges that in the assessment order dated 06-03-2019, Ld. AO made addition of unaccounted investment for Rs.16.65 Lacs and addition of unaccounted brokerage income for Rs.100 Lacs. The Ld. AO also disallowed agricultural income of Rs.6.50 Lacs. The assessment was framed pursuant to search action on assessee on 16-11-2016.

2.2 The first appellate authority allowed claim of agricultural income and also deleted the addition of unaccounted brokerage income. The addition of unaccounted investment was based on loose sheets seized by the searched party which contained the details of construction cost of the 'Saimahima' property situated at Kotturpuram, Chennai. The total cost incurred as per loose sheets was Rs.466.59 Lacs and the assessee, in statement u/s 132(4), stated the all costs were accounted for in the books of accounts. However, Ld. AO alleged that the assessee failed to establish the afore-said fact. Accordingly, Ld. AO made addition thereof in AYs 2011-12 & 2012-13. The addition for AY 2012-13 was made for Rs.16.65 Lacs. Consequently penalty proceedings were initiated by Ld. AO for both the years u/s 271(1)(c) and show cause notice was issued on 06-03-2019 directing the assessee to defend the same. The Ld. AR stated that no further action was taken by Ld. AO in these penalty proceedings.

2.3 The assessee furnished reconciliation and explanations during first appellate proceedings. For AY 2012-13, the cost as stated to be incurred was for Rs.123.93 Lacs which was stated to be partly sourced out of drawings. The Ld. AO was directed to verify the same. However, it was conceded that investment of Rs.99.65 Lacs was met out of unaccounted income. The same was confirmed vide first appellate order dated 29-11-2019. Consequently, fresh penalty proceedings were initiated by Ld.

CIT(A) against the same on the allegation that the assessee had concealed the particulars of income towards unexplained investments. Consequently, penalty notice u/s 271(1)(c) was issued to the assessee on 29-11-2019 on the ground that the assessee concealed the particulars of income.

2.4 Though the assessee assailed levy of any penalty on various grounds and relied on various judicial decisions, Ld. CIT(A) rejected the same and levied impugned penalty of Rs.30.88 Lacs for concealment of income vide impugned order dated 24-03-2021. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

3. The Ld. AR stated that initially Ld. AO made addition of unexplained investment for Rs.449.94 Lacs for AY 2011-12 and made similar addition for AY 2012-13 for Rs.16.65 Lacs. During appeal proceedings, the assessee led evidences to show that entire investment of Rs.466.59 Lacs was made not over two AYs but over three AYs viz. 2010-11 to 2012-13. The same was accepted by Ld. CIT(A). The assessee also led evidences to establish that substantial investments were made out of explained sources. Ultimately, the addition as computed by Ld. CIT(A) for all the three years was substantially reduced to Rs.347.07 Lacs. Another argument is that Ld. CIT(A) initiated penalty in respect of amounts for which Ld. AO had already initiated penalty proceedings which were pending when the penalty order was passed by Ld. CIT(A). The enhancement as made by Ld. CIT(A) for AY 2012-13 was relating to the same investment and there was only a shifting of part of the additions from AY 2011-12 to 2012-13 and there was no real enhancement of the income. The Ld. AO had already initiated penalty

proceedings for both the years on account of investment made in the same property. Therefore, the impugned penalty was without jurisdiction. The penalty could be levied by the same authority who is satisfied that the assessee had committed the default. In the case of the assessee, Ld. AO had recorded the satisfaction of concealment of income in the assessment order and it would be Ld. AO only who would be within its jurisdiction to levy the penalty. In assessee's case, it was Ld. AO who first recorded the satisfaction about concealment and only Ld. AO would have jurisdiction to levy the penalty. Reference has been made to the decision of Hon'ble Karnataka High Court in the case of **CIT vs. Manjunatha Cotton & Ginning Factory (359 ITR 565)** to support this proposition. The Ld. AR finally contended that the action of Ld. CIT(A) in levying the penalty on an initiation made by Ld. AO which has not been brought to a logical conclusion and which has not become barred by limitation as on the date of order of Ld. CIT(A), would therefore be not in line with the provisions of Sec.271(1)(c). Finally, Ld. AR stated that in AY 2011-12, out of addition of Rs.449.94 Lacs as made by Ld. AO, the addition to the extent of Rs.160.87 Lacs was confirmed in first appeal. The Ld. AO had initiated penalty but no penalty order was passed. The Ld. CIT(A) also did not pass any penalty order. Since no penalty was levied though it had been initiated for AY 2011-12, the conclusion that may be drawn is that the penalty proceedings had been dropped. Therefore, following rule of consistency, the impugned penalty is liable to be deleted.

4. Having gone through the arguments of Ld. AR and after going through the written submissions of Ld. AR, we find substantial force in the same. It is quite clear that the assessee was saddled with certain

addition of unaccounted investment in one property for AYs 2011-12 and 2012-13. The Ld. AO initiated penalty for the same. However, during appellate proceedings, the assessee reconciled the investment and led evidences to show that the investments were, in fact, made over three years. After due consideration of the same, the claim was partly accepted as under: -

AY	Investment made by the assessee	Addition made by Ld. AO	Addition sustained in first appeal
2010-11	86.24 Lacs	Nil	86.24 Lacs
2011-12	214.41 Lacs	449.94 Lacs	160.87 Lacs
2012-13	123.94 Lacs	16.65 Lacs	99.95 Lacs
	424.59 Lacs	466.59 Lacs	347.07 Lacs

It could be seen that though Ld. AO made addition for unaccounted investment in one property for AYs 2011-12 & 2012-13, ultimately, after reconciliation, the said additions have been spread over three years and the claim of the assessee has partially been accepted. On these facts, it could be said that there was no enhancement by Ld. CIT(A) but only a modification of the quantum of addition. For this addition, Ld. AO had already initiated penalty proceedings which were pending on the date of passing of quantum order as well as penalty order by first appellate authority. In fact, no penalty has ever been levied by Ld. AO. In our considered opinion, for the same addition, during pendency of existing penalty proceedings, another similar proceeding could not be initiated against the assessee since parallel proceedings are not permissible. The penalty has to be levied by the same authority who has first recorded the requisite satisfaction. It is also discernible that though substantial addition has been made on similar facts in AY 2011-12, no penalty has been levied on the assessee and it could be presumed that the penalty proceedings were dropped. The rule of consistency favors the case of

the assessee. Therefore, on the facts and circumstances of the case, the impugned penalty is liable to be deleted. We order so.

5. The appeal stand allowed in terms of our above order.

Order pronounced on 18th November, 2024.

Sd/-

(MAHAVIR SINGH)

उपाध्यक्ष / **VICE PRESIDENT**

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 18-11-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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