

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

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय 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.1221/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2013-14)

Shri Palladam Krishnasamy Ganeshwar 21, Shri Ganesa Textiles, Pollachi Road, Palladam, Tirupur-641 664.	बनाम/ Vs.	DCIT Central Circle-3 Coimbatore.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. ADFG-6476-N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri S. Sridhar (Advocate)-Ld.AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri R. Clement Ramesh Kumar (CIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	10-09-2024
घोषणा की तारीख / Date of Pronouncement	:	19-11-2024

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aggrieved by confirmation of penalty of Rs.86.39 Lacs u/s 271(1)(c) for Assessment Year (AY) 2013-14 vide impugned order passed by learned Commissioner of Income Tax (Appeals), Chennai-20, [CIT(A)] on 29-02-2024, the assessee is in further appeal before us. The penalty has been levied by Ld. AO vide order dated 18-03-2022 against an assessment framed u/s 143(3) r.w.s 153A of the Act on 18-06-2021.
2. Upon perusal of assessment order, it could be seen that the assessment was framed consequent to search action on assessee on

06-03-2019. In response to notice issued u/s 153A, the assessee filed return of income declaring income of Rs.513.15 Lacs which include additional income of Rs.279.61 Lacs vis-à-vis regular return of income filed u/s 139(1). The additional income represents unaccounted cash paid by the assessee for purchase of land from certain parties. The Ld. AO accepted the same but initiated impugned penalty for concealment of income.

3. In response to penalty show cause notice, the assessee submitted that no penalty could be levied if any income is voluntarily admitted in the return of income filed u/s 153A. In case the returned income has been accepted by the revenue, 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)**. The assessee submitted that mere rejection of the explanation as offered by the assessee would not tantamount to presumption of concealment of income. However, Ld. AO rejected the same in terms of Explanation-5A to Sec. 271(1)(c) which provide that such admission would be deemed concealment of income or furnishing of inaccurate particulars of income. Finally, the impugned penalty was levied on the assessee. The Ld. CIT(A) confirmed the same against which the assessee is in further appeal before us.

4. From the facts, it is undisputed fact that the returned income as filed by the assessee has been accepted by Ld. AO. The only reason to levy penalty is that such declared income is more than income previously reported by the assessee in original return of income. Nevertheless, in our considered opinion, 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 fortified 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 (CRL O.P.No.28572 of 2018 & Crl. M.P.No.16630 of 2018 dated 09-11-2023)**. In para 14 & 15 of this decision, the Hon'ble

court has accepted the ratio of this decision. Respectfully following the same, we delete the impugned penalty.

5. The appeal stand allowed.

Order pronounced on 19th November, 2024

Sd/- (MANU KUMAR GIRI) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (MANOJ KUMAR AGGARWAL) लेखक सदस्य / ACCOUNTANT MEMBER
---	---

चेन्नई Chennai; दिनांक Dated : 19-11-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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