

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

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2029/Chny/2024, Assessment Years: 2012-13

आयकर अपील सं./ITA No. 2030/Chny/2024, Assessment Years: 2013-14

आयकर अपील सं./ITA No. 2031/Chny/2024, Assessment Years: 2014-15

Selvaraj Arputharaj
No.5, Uppilipayalam Main Road,
Krishna Nagar,
Coimbatore-641 028.
[PAN: ADJPA9492L]

Deputy Commissioner of Income Tax,
Corporate Circle-1,
Coimbatore

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Shri R.Anish Kumar, Advocate.

प्रत्यर्थी की ओर से /Revenue by

: Ms.R. Anita, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 10.12.2024

घोषणा की तारीख /Date of

: 18.12.2024

Pronouncement

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

S. No.	Appeal Nos.	AYs	Appel-lant	CIT(A) Order Details	Respondent
A	B	C	D	E	F
1	ITA No. 2029 / Chny / 2024	2012-13	Selvaraj Arputharaj, No.5, Uppilipayalam Main Road, Krishna Nagar, Coimbatore-641 028. [PAN: ADJPA9492L]	DIN & Order No.ITBA / APL / S / 250 / 2024-25 / 1065128064(1) dated 25.05.2024	Deputy Commissi oner of Income Tax, Corporate Circle-1, Coimbatore
2	ITA No. 2030 / Chny / 2024	2013-14		DIN & Order No.ITBA / APL / S / 250 / 2024-25 / 1065128474(1) dated 25.05.2024,	
3	ITA No. 2031 / Chny / 2024	2014-15		DIN & Order No.ITBA / APL / S / 250 / 2024-25 / 1065128554(1) dated 25.05.2024	

2.0 At the outset, it is to be noted that the appellant had requested for filing of additional grounds of appeal on 21.11.2024 that the impugned penalty orders contested vide the aforementioned appeals have actually passed beyond the permissible timelines and deserved to be quashed. The Ld. DR vehemently objected to filing of the additional grounds on the premise they are non-maintainable at this stage of advance hearing. Upon consideration of the entire facts of the case we are of the view that ends of justice would be met if the additional grounds raised by the assessee are admitted. We have however also noted that vide grounds of appeal no.(g) for ITA No.2030 and 2031, the assessee had contested that the impugned penalty order dated 25.10.2021 is partly time barred qua the understatement of the income in respect of amounts of Rs.49,51,362/- and Rs.1,87,75,583/- respectively. Accordingly the need for additional ground is incomprehensible. Be that as it may be, we proceed to adjudicate this appeal after admitting the impugned additional grounds.

3.0 All the three appeals raised by the appellant are having identical issues both on the legal issue raised by the appellant by additional ground as well as on the merits of the case and hence adjudicated altogether.

ITA No. 2029 / Chny / 2024 for AY 2012-13

4.0 The only issue raised by the assessee vide its grounds of appeal no.(a) to (e) and the additional ground supra are centering around a penalty order u/s 271(1)(c) dated 25.05.2021 imposing a penalty of Rs.4,01,027/. Brief facts of the case are that the assessee that a search was conducted u/s 132 leading to discovery of material alluding towards undisclosed rental income. The assessee contested the quantum addition of Rs.12,97,824/- before the Ld.CIT(A) as well as this tribunal. After considering the directions of the superior appellate authorities, the Ld. AO finally quantified the addition at Rs.12,97,824/- vide his order dated 27.09.2019. This final quantum addition has admittedly not been contested by the appellant any further. There after the Ld. AO proceeded with pending penalty proceedings u/s 271(1)(c) and after considering assesee's reply levied a penalty of Rs. 4,01,027/-.

5.0 We have heard the rival submissions in the light of material available on records. Before us the Ld.Counsel argued that the quantification made by the Ld. AO is not correct. It was also submitted that the quantum addition was not contested because of small amount of tax involved therein. The Ld. Counsel however failed to answer as to when the quantum addition was accepted by them, how can the penalty be challenged. The Ld. Counsel through additional ground argued that

in terms of provisions of section 275 the penalty has become time barred since assessment order was passed on 27.09.2019 and penalty notice was also issued on 27.09.2019, penalty order ought to have been passed by 31.03.2020. However, as the order was passed on 25.10.2021, the penalty has become time barred. The Ld. DR argued that the assessee cannot challenge the penalty order as the quantum addition has been admitted by it and that once concealed income is finally determined, penalty is automatically to be levied. It was argued that the rental income was discerned by the department on account of search proceedings and therefore penalty was attracted. On the issue of limitation matter, the Ld. DR submitted that revenue's case is protected by TOLA guidelines effective from 23.03.2020 to 31.03.2022 and thus penalty proceedings would not fall in the mischief of limitation statute.

6.0 We find sufficient force in the argument of Ld. DR regarding the penalty order dated 25.10.2021 in respect of penalty on rental income, not hit by limitation in view of the TOLA guidelines. These guidelines were issued by Hon'ble Apex court in view of Covid-19 and have assumed the character of law of land for contemporaneous statute. We are therefore of the view that penalty order u/s 271(1)(c) 25.10.2019 survives. As regards the merits of the levy of penalty we are of the view that as the quantum addition on undisclosed rental income has not been contested

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by the appellant and rather admitted, the consequent penalty cannot be challenged. We do not find any force in the argument of the Ld. Counsel that the quantum order was not challenged because of smallness of tax involved. Quantum of tax is not material it is the conduct of the assessee which is at the top consideration. The impugned concealed or undisclosed rental income was detected on account of search proceedings and the same has been accepted by the assessee qua the assessment order. The penalty order which follows the quantum addition therefore is a natural corollary. **Accordingly, the grounds of appeal raised by the assessee are dismissed as far as imposition of penalty on concealed rental income is concerned.**

In the result the appeal for ITA No. 2029 / Chny / 2024 for AY 2012-13 is dismissed.

**ITA No. 2030 / Chny / 2024 for AY 2013-14 &
ITA No. 2031 / Chny / 2024 for AY 2014-15**

7.0 As far as the penalty u/s 271(1)(c) vide order dated 25.10.2021 for concealment of rental income in above appeals are concerned, it is noted that facts of the case as in ITA No.2029/Chny/2024 for AY 2012-13 above are identical except for change in figures. The arguments of the both the sides are identical.

Accordingly, the decision taken in ITA No.2029 would apply mutatis mutandis. **Accordingly the grounds of appeal raised by the assessee qua challenge to penalty u/s 271(1)(c) vide ITA No.2030 and 2031 above, for undisclosed rental income are dismissed.**

8.0 Through the above appeals the appellant has also contested through ground of appeal regarding the legality of penalty proceedings in respect of under stated income which was confirmed by the appellate authorities, submitting that the penalty order u/s 271(1)(c) dated 25.10.2021 is barred by limitation. Brief facts of the case are that the Ld.AO had made addition of Rs.49,51,362/- and Rs.1,87,75,583/- for AY-2013-14 and AY 2014-15 respectively on account of under statement of income. The Ld. CIT(A) had confirmed the impugned addition in quantum proceedings. Thereafter the assessee contested the matter before the Hon'ble coordinate bench of this tribunal. As evident in para 5.1 of the order dated 25.05.2024 of Ld.CIT(A) passed vide DIN & Order No. ITBA/APL/S/250/2024-25/1065128474(1), this tribunal vide its order ITA No. 425-431/2016-17 dated 13.06.2018 had confirmed the additions of Rs.49,51,362/- and Rs.1,87,75,583/- for AY-2013-14 and AY 2014-15 in respect of the under statement of income. Nothing has been brought on record that there was any contest against this order by the assessee. Thus, the

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order of the Hon'ble Coordinate bench became final on the quantum addition of impugned under statement of income. Within the meanings of section 275(1)(a) the revenue was required to conclude penalty proceedings qua the quantum addition of impugned under statement of income within six months from the end of the month of receipt of order of the Hon'ble tribunal by the CIT / Pr.CIT / CCIT / Pr.CCIT.

8.1 It is the case of the assessee that the penalty u/s 271(1) (c) qua the quantum addition of impugned under statement of income has been passed by the Ld.AO vide its order dated 25.10.2021. The Ld. DR argued that the case would fall within the meanings of proviso to section 275 (1)(a) and the department gets time to complete the same within one year from the end of the financial year in which order of the CIT(A) is received by the CIT / Pr.CIT / CCIT / Pr.CCIT. It has been argued by the Ld. DR that the TOLA guidelines would be helping the department in respect of this issue also.

8.2 We have heard the rival submissions in the light of material available on records. We have noted that the arguments put forth by the Ld. DR are not based upon correct understanding and appreciation of the facts of the case. It is an undisputed facts on record that the addition of Rs.49,51,362/- and Rs.1,87,75,583/- for AY-2013-14 and AY 2014-15 respectively on account of under statement of income was

confirmed by this Hon'ble tribunal vide its order ITA No. 425-431/2016-17 dated 13.06.2018. Thus as a sequel to the same provisions of section 275(1)(a) automatically kick into force. The penalty order u/s 271(1)(c) was therefore required to be passed within six months from the end of the month of receipt of the tribunal order. Presuming that order of this Hon'ble tribunal was served in the last month of the financial year FY-2018-19 that is by 31.03.2019, the penalty order u/s 271(1)(c) was required to be passed on or before 30.09.2019. It is also an undisputed fact on record that the penalty order levying penalty u/s 271(1)(c) qua addition of Rs.49,51,362/- and Rs.1,87,75,583/- for AY-2013-14 and AY 2014-15 was passed on 25.10.2021. Accordingly, it is abundantly clear that the penalty order dated 25.10.2021 has been hit by limitation prescribed in section 275(1)(a) and cannot survive. Accordingly, the penalty order u/s 271(1)(c) dated 25.10.2021 for AY-2013-14 and AY 2014-15 qua addition of Rs.49,51,362/- and Rs.1,87,75,583/- in respect of under statement of income is quashed. The order of lower authorities on the issue set aside and the Ld. AO is directed to recompute the quantum of penalty payable by the assessee after removing the penalty component qua addition of Rs.49,51,362/- and Rs.1,87,75,583/- in respect of under statement of income.

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The grounds of appeal raised by the assessee towards penalty order having been time barred in respect of under statement of income for ITA No.2030 and 2031 above are therefore allowed.

9.0. In the result, the appeals of the assessee are decided as under:-

ITA Nos	Assessment Year	Result
ITA-2029/Chny/2024	2012-13	Dismissed
ITA-2030/Chny/2024	2013-14	Partly Allowed
ITA-2031/Chny/2024	2014-15	Partly Allowed.

Order pronounced on 18th, December-2024 at Chennai.

Sd/-

(यस यस विश्वनेत्र रवि)

(SS VISWANETHRA RAVI)

न्यायिक सदस्य / Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 18th, December-2024.

KB/-

Sd/-

(श्री अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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