

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्न
IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 3169/CHNY/2024
निर्धारण वर्ष/Assessment Years: 2017-18

Shri S.Pothiraj,
3, North Car Street,
Tirunelveli Town-627 006.
PAN: ACXPP-8538-R
(अपीलार्थी/Appellant)

Deputy Commissioner
of Income Tax,
Vs. Central Circle-1(3)
Chennai.
(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA No.: 3170/CHNY/2024
निर्धारण वर्ष/Assessment Years: 2017-18

Shri S.Mahesh,
3, North Car Street,
Tirunelveli Town-627 006.
PAN: ACVPM-6890-K
(अपीलार्थी/Appellant)

Deputy Commissioner
of Income Tax,
Vs. Central Circle-1(3)
Chennai.
(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA No.: 3171/CHNY/2024
निर्धारण वर्ष/Assessment Years: 2017-18

Shri S.Murugesh
3, North Car Street,
Tirunelveli Town-627 006.
PAN: ACVPM-6963-D
(अपीलार्थी/Appellant)

Deputy Commissioner
of Income Tax,
Vs. Central Circle-1(3)
Chennai.
(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA No.: 3172/CHNY/2024
निर्धारण वर्ष/Assessment Years: 2017-18

Shri S.Ashok
3, North Car Street,

Deputy Commissioner
of Income Tax,
Vs.

Tirunelveli Town-627 006.
PAN: ABTPA-7033-M
(अपीलार्थी/Appellant)

Central Circle-1(3)
Chennai.
(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA No.: **3173/CHNY/2024**
निर्धारण वर्ष/**Assessment Years: 2017-18**

Shri S.Ramesh
3, North Car Street,
Tirunelveli Town-627 006.
PAN: ABOPR-8449-M
(अपीलार्थी/Appellant)

Deputy Commissioner
of Income Tax,
Vs. Central Circle-1(3)
Chennai.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Mr. Y.Sridhar, FCA
प्रत्यर्थी की ओर से/Respondent by : Ms.Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing : 27.02.2025
घोषणा की तारीख/Date of Pronouncement : 06.03.2025

आदेश / **O R D E R**

PER GEORGE GEORGE K, VICE PRESIDENT:

These five appeals at the instance of different assessee's are directed against five separate orders of CIT(A), Chennai-18, all dated 16.10.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2017-18.

2. The common issue is raised in these appeals, hence, they were heard together and are being disposed off by this consolidated order.

3. The solitary issue raised is whether CIT(A) is justified in confirming penalty imposed u/s.270A of the Act.

4. Brief facts are as follows:-

The assessees in these cases are brothers and partners in M/s Pothys group. A search u/s.132 of the Income Tax Act was conducted in the case of M/s. Pothys P.Ltd on 18.10.2016. Consequent to search, notice u/s.153C r.w.s 153A was issued to the assessees. For assessment year 2017-18, assessment was completed u/s.153C r.w.s. 153A r.w.s 143(3) vide order dated 18.11.2019. A common addition was made for all these assessees for AY 2017-18 u/s.56(2)(vii)(b)(ii) of the Act. All the five assessees during the previous year relevant to concerned assessment year 2017-18, had jointly purchased a property at Kancheepuram vide sale deed dated 07.06.2016. The total consideration disclosed in sale deed was Rs.31,80,000/-. The guideline value of the impugned property was Rs.84,80,000/-. During the course of assessment proceedings, the AO proposed to treat the guideline value as sale consideration. The difference of

sale price mentioned in sale deed and guideline value was sought to be added as per deeming provision u/s. 56(2)(vii)(b) of the Act. The assessee objected to the proposal of the AO and requested that matter may be referred to valuation cell of the department. The DVO determined value of the property at Rs.74,99,648/-. The AO treated the difference of Rs.43,19,648/- [i.e.Rs. 74,99,548 minus Rs.31,80,000] and added sum of Rs.8,63,930/- being 1/5th of share u/s.56(2)(vii)(b) of the Act in the hands of each of the assesseees. At the time of completion of assessment, AO initiated penalty proceedings u/s.270A of the Act for under-reporting of income. Subsequently, AO levied penalty of Rs.1,33,477/- u/s.270A of the Act in respect of each of the five assesseees.

5. Aggrieved by the orders imposing penalty u/s.270A of the Act, the assesseees had filed appeals before the First Appellate Authority. The CIT(A) dismissed the appeals of the assesseees. The CIT(A) held that during the course of search and seizure, it was found that assesseees and their family members have generated unaccounted income, which was invested in purchase of unaccounted assets. It was held by CIT(A) that said unaccounted income generated has been invested in purchase of properties below guideline value. The CIT(A) concluded that there was no

bonafide explanation provided regarding purchase of property below the guideline value, therefore penalty imposed u/s.270A of the Act for under reporting of income for the year is to be confirmed. The relevant finding of the CIT(A) reads as follows:-

"5.7 Section 270A of the Act provides for imposition of penalty for under-reporting and misreporting of income. Sub-section (2) enlists certain circumstances of under-reporting of income. Sub-section (3) deals with the determination of under-reported income, which, in our context, is by reducing the income returned by the assessee from the amount of income finally assessed. Sub-section (6) is relevant for our purpose which states that under-reported income for the purpose of this section shall not include certain items. Clause (b) of sub-section (6) refers to: "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 AO".

5.8 In the instant case, the income was proposed to be determined on the basis of guideline value as per the sale deed and as there was objection, the matter was referred to DVO and additions to total income were made on the basis of report of DVO. The AO was not satisfied with the explanation provided, as at the beginning of the penalty order, he has pointed out that the assessee has been indulging in generation of unaccounted income which are represented in the form of unaccounted assets. Hence the AO was not satisfied with the explanation of the appellant that there was no under reporting of income. The clause (b) of subsection 6 applies to a situation where the income is estimated but the books are correct and complete and in the instant case, this situation does not exist.

5.9 During the course of search and seizure, the appellant and his family members were found to be involved in the generation of unaccounted income which was invested in purchase of unaccounted assets. In this year also, the appellant and his family

members were found to have purchased properties below guideline value and no bonafide explanation was provided regarding the purchase of property below guideline value. The additions made in this case make out a case for underreporting of income for the year. As no other reasons exist to differ, I concur with the action of AO in levying Penalty for underreporting. Hence I uphold the levy of penalty in this case."

6. Aggrieved by the order of CIT(A), assessees have filed present appeal before the Tribunal. The grounds raised are identical and they read as follows:-

"1. The Assessing Officer (AO) wrongly imposed a penalty of 1,33,477 under Section 270A of the Income-tax Act. The addition made was based on deeming provisions, not due to underreporting by the assessee. The penalty should be deleted. The AO used Section 56(2)(vii)(b) to add the difference between the sale price and a valuation estimate by the DVO (District Valuation Officer). This estimate is not concrete proof of the property's fair market value. No incriminating evidence was provided to suggest that more was paid than what was reported. The Assesse has disclosed all the material facts before the Assessing Officer. Therefore, there was no underreporting, and the penalty is unjustified.

2. The property in question was bought for 31,80,000, with a market rate of 1,500 per sq.ft. The DVO, however, used a rate of 3,537 per sq.ft. This valuation ignored important factors like the property's location in a less developed residential area, which should not be compared to commercial areas. Thus, the penalty based on this wrong valuation is not justified.

3. In June 2017, the Tamil Nadu government revised the property's guideline value to 3,000 per sq.ft., supporting the assessee's claim that the 2016 market value was lower. The AO ignored this fact, making the penalty baseless.

4. Relevant Court Rulings

The Kolkata High Court ruled in a similar case (CIT vs. Madan Theatres Ltd.) that penalty cannot be imposed based on a deemed value higher than the actual price. The penalty under Section 270A cannot be based on estimates, as per the ITAT Ahmedabad decision in the case of Dipakumar Ishwarlal Panchal and the ITAT Pune ruling in Jaibalaji Business Corporation Ltd. The addition made by the DVO is merely an estimate, not actual evidence.

5. Clause b of sub-section 6 refers to 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. It is clear from the language of sub-section 6 that an addition made on the basis of estimation cannot provide foundation for under-reported income for the purpose of imposition of penalty u/s 270A of the Act. The learned AO failed to understand the fact that the only basis of the addition is the estimate made by the DVO hence penalty levied u/s 270A of the Act is not in accordance with law. This fall in line with the decision of Honourable ITAT A Bench Pune in ITA NO840/PUN/2022 dated 10-02-2023 in the case of Jaibalaji Business Corporation Ltd Vs ACIT, Pune where the addition was made u/s 56 in consequence of addition u/s 43CA held that penalty u/s 270A cannot be levied for the addition made under deeming provisions of the Act.

6. The ITAT Delhi in the case ITO vs. Ajay Sharma (ITAT Delhi, 2017) canceled the penalty under Section 271(1)(c) for an addition made under Section 50C. The tribunal held that the valuation by the Stamp Valuation Authority does not conclusively prove that the actual sale consideration was higher than reported. Since there was no evidence of the assessee receiving more than what was declared in the sale deed, the penalty for concealment was found unjustified.

7. In the case, Smt. Varshaben Vipulbhai Bhalani vs. ITO (ITAT Ahmedabad, 2023), the Income Tax Appellate Tribunal (ITAT) ruled that penalties under Section 271(1)(c) cannot be imposed solely based on the deeming provision of Section 50C. The tribunal emphasized that Section 50C, which considers the stamp duty valuation as full value for capital gains, is only a presumption. If the assessee has provided all relevant information and the difference arises due to the deemed value, this cannot be treated as concealment of income or furnishing inaccurate particulars.

8. Recent developments

Moreover the addition u/s 153C read with section 56 (2) (b) was rendered unlawful by the Honourable ITAT Chennai for AY 2014-15 and 2016-17 pertaining to Appellants dealing elaborately vide the order dtd 27th September 2024. More over the Appeal against the Assessment is Pending before High Court Chennai for the relevant AY 2017-18. Further no penalty proceedings were initiated for AY 2014-15 and 2016-17 for 56(2) (b) additions

9. Although not directly related to Section 50C, this case is often cited in penalty matters. The Supreme Court ruled in the case CIT vs. Reliance Petroproducts Pvt. Ltd. (Supreme Court, 2010) that simply making an incorrect claim does not amount to concealment of income. This precedent is important in cases where additions are made due to deeming provisions like Section 50C/56, as it protects taxpayers from penalties if they have not intentionally misreported/underreported income.

10. The AO has no evidence to prove that the declared sale consideration is incorrect. No incriminating material has been unearthed in the case of Assessee. The Pothys Partnership firm and the Pothys Private Ltd had settled all the issues with Settlement commission. Hence, the penalty is unlawful that too based on deeming provisions. Therefore, it is requested that the penalty under Section 270A be deleted and render justice"

7. The learned AR submitted that issue in question is squarely covered in favour of the assessee. It was submitted that no penalty u/s.270A of the Act, can be imposed when addition is on account of estimation of fair market value by the valuation officer. In this context, the learned AR relied on the following judicial pronouncements:-

- i) Hon'ble High Court of Calcutta judgement in the case of CIT Vs Madan Teatres Ltd. (260 CTR 75) dated 15.05.2013.
- ii) ITAT., Mumbai decision in the case of M/s.Alrameez Construction P.Ltd.in ITA No.482/Mum/2023 vide order dated 12.06.2023.
- iii) ITAT., Delhi decision in the case of Shri Aswani Jaipaty Vs. DCIT in ITA No.276/Del/2018 vide order dated 11.07.2018.
- iv) ITAT., Mumbai decision in the case of Satyam Print House Vs.ACIT in ITA No.2898/Mum/2023 (order dated 08.03.2024).

8. The learned DR supported orders of AO and CIT(A).

9. We have heard the rival submissions and perused material on record. On a query from the Bench, the learned AR submitted as against the quantum assessment, appeal is pending adjudication before the Hon'ble High Court. In the instance case, the addition is made invoking deeming provision as per section 56(2)(vii)(b) of the Act. The only basis of addition is estimate made by the DVO. There is nothing on record to suggest that assessee had paid more than the price mentioned in the sale deed. When deeming provisions are applied for addition of income, neither concealment of income or under reporting of income can be established against assessee without other material facts on record. The AO has failed

to appreciate section 270A(6)(a) of the Income Tax Act, which prescribes "under reporting" of income shall not include the amount of "under reported income" determined on the basis of estimation. On identical facts, the Mumbai Bench of the Tribunal in the case of Satyam Print House Vs. ACIT in ITA No.2898/Mum/2023 (order dated 08.03.2024) had deleted penalty imposed u/s.270A of the Act. The relevant finding of the Tribunal in the case of Satyam Print House Vs. ACIT reads as follows:-

"It is pertinent to note that even the Valuation Officer had determined the fair market value of the immovable property at INR 2,45,00,000/- which was lower than the stamp duty valuation of INR 3,23,55,630/-. The Assessing Officer had determined the amount of under-reported income on the basis of estimate made by the Valuation Officer in respect of the fair market value of the immovable property after comparing the same with the sale consideration of INR 2,10,00,000/-. We note that as per Section 270A(6)(c) of the Act under-reported income does not include the amount of under-reported income determined on the basis of an estimation, where an assessee has estimated a lower amount of addition on the same issue provided all facts material to addition have been disclosed by the Assessee. In the present case the Assessee is on a better footing. While the addition has been made on account of estimation of fair market value by the Valuation Officer, the income has been computed by the Assessee on the basis of sale consideration determined by the Assessee by negotiation/agreement with a third party and not by way of estimation. Thus, our conclusion in paragraph 12 above that additional income of INR 35,00,000/- was to be excluded from the ambit of under-reported income also draw support from the provisions contained in Section 270A(6)(c) of the Act."

10. Similar view has been held in the aforementioned judicial pronouncements cited supra (para 7).

11. In the instant case, AO for imposing penalty u/s.270A of the Act had taken into account difference in fair market value determined by the DVO on estimation basis with that of the sale deed price and added the same under the deeming provision without specifically pointing out that assessee had received amounts over and above the price mentioned in sale deed. In view of the aforesaid reasoning and by relying on judicial pronouncements cited supra, we delete the penalty imposed u/s.270A of the Act, amounting to Rs.1,33,477/- in each of the cases. It is ordered accordingly.

12. In the result, appeals filed by the assesseees are allowed.

Order pronounced in the open court on 6th March, 2025.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 6th March, 2025

DS

Sd/-

(जॉर्ज जॉर्ज के)

(GEORGE GEORGE K)

उपाध्यक्ष /VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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