

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री चंद्र पूजारी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.987/Mds/2013

निर्धारण वर्ष / Assessment Year : 2006-07

Smt. R. Hema Maheswari,
No.38 (Old No.24), A.B.M. Avenue,
R.A. Puram, Chennai - 600 028.

v. The Assistant Commissioner
of Income Tax,
Central Circle III(3),
Chennai - 600 034.

PAN : ABEPH 2330 P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1306/Mds/2013

निर्धारण वर्ष / Assessment Year : 2006-07

The Deputy Commissioner of
Income Tax,
Central Circle III(3),
Chennai - 600 034.

v. Smt. R. Hema Maheswari,
No.38 (Old No.24),
A.B.M. Avenue, R.A. Puram,
Chennai - 600 028.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by : Shri G. Baskar, Advocate

राजस्व की ओर से /Revenue by : Shri Supriyo Pal, JCIT

सुनवाई की तारीख/Date of Hearing : 23.06.2016

घोषणा की तारीख/Date of Pronouncement : 01.09.2016

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals of the assessee and Revenue are directed against the order of the Commissioner of Income Tax (Appeals) – II, Chennai, dated 06.03.2013, confirming the penalty levied by the Assessing Officer under Section 271(1)(c) of the Income-tax Act, 1961 (in short "the Act"). Since common issue arises in both these appeals, we heard both the appeals together and disposing of the same by this common order.

2. Shri G. Baskar, the Ld. counsel for the assessee, submitted that there was search in the Vel Tech Group of Institutions in the year 2010. A simultaneous search was also conducted in the case of the present assessee. For the assessment year 2006-07, the Assessing Officer made an addition of ₹9 lakhs towards lease advance. According to the Ld. counsel, the reason for making the addition is that the copy of agreement with Vel Horticulture Ltd. was not produced before the Assessing Officer. The fact remains that the assessee has received ₹9 lakhs as advance. Moreover, the addition was made under Section 153A of the Act. Since the source of receipt of money is lease advance, even though the

addition was sustained in the hands of the assessee, according to the Ld. counsel, there cannot be any penalty under Section 271(1)(c) of the Act. According to the Ld. counsel, there was no concealment of income on the part of the assessee.

3. Shri G. Baskar, the Ld. counsel for the assessee, further submitted that during the year under consideration, the assessee has sold her share of property at Tirupathi for a sale consideration of ₹22 lakhs. In fact, the assessee's mother Smt. Sakunthala Rangarajan acquired the property through her mother by way of gift on 30.08.1980. In turn, Smt. Sakunthala Rangarajan gifted the property to her three daughters equally on 29.06.2003. The said property was sold on 21.11.2005 for a sale consideration of ₹66 lakhs. The assessee's 1/3rd share comes to ₹22 lakhs. While computing the long term capital gains, the assessee took the cost of acquisition at ₹6 lakhs. However, the Assessing Officer took the value at ₹1,87,204/- and computed the long term capital gains to the extent of ₹20,12,796/-. According to the Ld. counsel, the dispute was with regard to the valuation of property as on 01.04.1981. The fact is that capital gain as disclosed in the regular return was not in dispute. Merely because the difference of opinion between the

assessee and Assessing Officer for taking the valuation of property as on 01.04.1981 that cannot be construed as concealment of income as claimed by the Assessing Officer. Therefore, according to the Ld. counsel, the CIT(Appeals) has rightly deleted the addition.

4. The Ld.counsel for the assessee further submitted that during the financial year 2002-03, the assessee showed opening cash balance of ₹22,90,198/- as on 01.04.2002. The assessee explained before the Assessing Officer that she was holding agricultural land to the extent of 6.46 acres, which was used for purchase of property. Disbelieving the claim of the assessee, the Assessing Officer levied penalty under Section 271(1)(c) of the Act. According to the Ld. counsel, the opening balance was shown for the assessment year 2003-04 relevant to the financial year 2002-03. Therefore, the addition can be made only for the assessment year 2003-04 and not for the year under consideration. Merely because the Assessing Officer made the addition for assessment year under consideration, according to the Ld. counsel, that would not automatically levy penalty under Section 271(1)(c) of the Act.

5. On the contrary, Shri Supriyo Pal, the Ld. Departmental Representative, submitted that the Assessing Officer levied penalty

in respect of three additions. Out of three additions on which penalty was levied, the CIT(Appeals) confirmed the penalty levied by the Assessing Officer in respect of only one addition. In respect of two other additions, the CIT(Appeals) deleted the penalty levied by the Assessing Officer. Therefore, the Revenue has also filed appeal in I.T.A. No.1306/Mds/2013 in respect of deletion of penalty by the CIT(Appeals). In respect of the penalty levied on the addition of ₹9 lakhs, the CIT(Appeals) found that the assessee could not produce any agreement in support of the so-called lease agreement with M/s Vel Horticulture Ltd. The CIT(Appeals) has also found that the assessee possessed only 6.46 acres of land. Therefore, according to the Ld. D.R., the assessee would not have received ₹ 9 lakhs as advance. Accordingly, he confirmed the penalty levied by the Assessing Officer. However, in respect of the addition to the extent of ₹9,06,196/- on account of long term capital gains, the CIT(Appeals) found that the assessee has disclosed the long term capital gains and the difference was only with regard to cost of acquisition of property. Accordingly, by placing reliance on the judgement of Apex Court in CIT v. Reliance Petroproducts Pvt. Ltd. 322 ITR 158, he deleted the penalty levied by the Assessing Officer. According to the Ld. D.R., when the assessee has not furnished the

correct cost of acquisition as on 01.04.1981, there was concealment of income, therefore, the CIT(Appeals) ought not have deleted the penalty levied by the Assessing Officer. The Ld. D.R., further submitted that the Assessing Officer also made an addition of ₹20 lakhs towards undisclosed cash credit. The assessee has shown ₹22,90,198/- as opening cash balance as on 01.04.2002. However, the assessee could not produce cash book in support of the above said opening balance. The assessee offered cash credit in the cash flow statement for assessment year 2006-07, which was availed for purchase of property during the year under consideration. Since the assessee claims cash balance as on 01.04.2002, it is for the assessee to establish the cash balance by producing necessary material. Since such material was not produced, according to the Ld. D.R., the addition was made. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the penalty levied by the Assessing Officer.

6. The Ld. Departmental Representative further submitted that with regard to addition of ₹11.97,289/-, being the difference between the income shown in the return of income under Section 153A of the Act and the original return, the assessee has offered entire amount

for taxation. Since it was unearthed during the course of search operation, the CIT(Appeals) found that the assessee has voluntarily offered the same in the block proceeding. But for the search, the assessee would not have disclosed ₹11,97,289/-. Therefore, according to the Ld. D.R., merely because the assessee disclosed the amount voluntarily in the return of income filed consequent to search operation under Section 153A of the Act that cannot be a reason for deleting the penalty levied by the Assessing Officer.

7. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, there was search in the premises of Vel Tech Group of Institutions during the year 2010 and consequently, a search was conducted in the premises of the assessee. During the course of search operation, several incriminating materials were found in respect of sale of property at Tirupathi and investment in the landed properties. The Assessing Officer made addition and also levied penalty under Section 271(1)(c) of the Act. With regard to addition of so-called agricultural income, the CIT(Appeals) confirmed the penalty levied by the Assessing Officer. With regard to long term capital gains, the CIT(Appeals) found that the dispute is with regard to cost of

acquisition of property as on 01.04.1981. Therefore, he deleted the penalty levied by the Assessing Officer. With regard to opening cash balance as on 01.04.2002, the CIT(Appeals) found that the assessee has not established the availability of funds, accordingly, he confirmed the penalty levied by the Assessing Officer. The CIT(Appeals) has also deleted the penalty with regard to difference between the income returned in the original return and the return filed under Section 153A of the Act. The fact remains that there was search operation in the year 2010 and undisclosed income was assessed under Section 153A of the Act. Therefore, this Tribunal is of the considered opinion that the penalty, if any, can be levied only under Section 271AAA of the Act. In other words, the undisclosed income computed by the Assessing Officer squarely falls in sub-clause (i) of 271AAA of the Act. Therefore, in view of sub-section (3) of Section 271AAA of the Act, there cannot be any levy of penalty under Section 271(1)(c) of the Act. In view of the specific prohibition under Section 271AAA(3) of the Act, this Tribunal is of the considered opinion that the Assessing Officer cannot levy penalty under Section 271(1)(c) of the Act. Therefore, the CIT(Appeals) ought to have deleted the entire penalty levied by the Assessing Officer. In view of the above, this Tribunal is unable to

uphold the orders of the lower authority. Accordingly, the orders of the Assessing Officer, as confirmed by the CIT(Appeals), are set aside and the entire penalty levied by the Assessing Officer is deleted.

8. In the result, assessee's appeal in I.T.A. No.987/Mds/2013 is allowed and the Revenue's appeal in I.T.A. No.1306/Mds/2013 is dismissed.

Order pronounced on 1st September, 2016 at Chennai.

sd/-
(चंद्र पूजारी)
(Chandra Poojari)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 1st September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-II, Chennai
4. आयकर आयुक्त /CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.