

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2262 & 2263/Mds/2014

निर्धारण वर्ष / Assessment Years : 2007-08 & 2008-09

M/s Shriram EPC Ltd.,
18/03, Rukmani Lakshmipathy
Road,
1st floor, R.A. Building,
Egmore, Chennai - 600 008.

v. The Deputy Commissioner of
Income Tax,
Company Circle VI(2),
Chennai - 600 034.

PAN : AAFCS 1410 C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri R. Sivaraman, Advocate
प्रत्यर्थी की ओर से/Respondent by : Sh. P. Radhakrishnan, JCIT

सुनवाई की तारीख/Date of Hearing : 15.10.2015

घोषणा की तारीख/Date of Pronouncement : 18.12.2015

आदेश / O R D E R

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

Both the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals)-VI, Chennai, dated 30.06.2014, confirming the penalty levied under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') for the assessment years 2007-08 and 2008-09. Since common issue

arises for consideration in both the appeals, we heard both the appeals together and disposing of the same by this common order.

2. Shri R. Sivaraman, the Ld.counsel for the assessee, submitted that the assessee engaged itself in the business of EPC contract. During the year under consideration, the assessee filed return of income admitting a total income of ₹18,53,76,780/-. The assessee claimed deduction in respect of the expenditure under Section 35D of the Act. The Assessing Officer subsequently reopened the assessment under Section 147 of the Act by issuing a notice under Section 148 of the Act on 10.09.2009. In the return filed in response to notice issued under Section 148 of the Act, the assessee has not claimed the expenditure under Section 35D of the Act. The Assessing Officer found that there was concealment of income in respect of the expenditure claimed under Section 35D of the Act and levied penalty under Section 271(1)(c) of the Act. The CIT(Appeals) has also confirmed the penalty. According to the Ld. counsel, the assessee furnished all the particulars in the original assessment and claimed expenditure of ₹70,41,431/- as allowable expenditure under Section 35D of the Act. After issuing notice under Section 148 of the Act, the assessee voluntarily offered the

same as income. Therefore, it is not a case of concealment of income. According to the Ld. counsel, at the best, it can be said that the assessee claimed the expenditure which is not otherwise allowable under Section 35D of the Act. Referring to the judgment of Apex Court in CIT v. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158, the Ld.counsel submitted that claiming an expenditure in the return of income after furnishing all the particulars of income does not amount to furnishing inaccurate particulars. Therefore, the CIT(Appeals) is not justified in confirming the penalty levied by the Assessing Officer.

3. On the contrary, Sh. P. Radhakrishnan, the Ld. Departmental Representative, submitted that the assessee claimed deduction under Section 35D of the Act in the original return though it is not allowable. Therefore, to that extent, the assessee filed inaccurate particulars and deliberately reduced the tax liability, therefore, the Assessing Officer found that the assessee furnished inaccurate particulars and levied penalty under Section 271(1)(c) of the Act. The Ld. D.R. further submitted that had the return not been taken up for scrutiny, the inaccurate particulars of income could not have come to light. Therefore, according to the Ld. D.R., the Assessing

Officer has rightly levied penalty and the CIT(Appeals) has also rightly confirmed the penalty.

4. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the original return was filed disclosing all the particulars of income and the assessee also claimed deduction under Section 35D of the Act. The assessment was reopened by issuing notice under Section 148 of the Act and consequent to the notice issued under Section 148 of the Act, the assessee filed the revised return in which the assessee has not claimed deduction in respect of the expenditure under Section 35D of the Act. The main contention of the Revenue is that by claiming deduction under Section 35D, the assessee intentionally reduced the income to the extent of expenditure claimed for deduction under Section 35D of the Act. The question arises for consideration is when the assessee claimed expenditure while filing the return of income and which was either disallowed by the Assessing Officer himself or the assessee accepted the disallowance before the Assessing Officer, can we say that there was concealment of income? An identical situation was examined by the Apex Court in *Reliance Petroproducts (P) Ltd.* (supra). The

Apex Court found that merely because a claim was made and the same was not accepted or was not acceptable to the Revenue that itself would not attract penalty under Section 271(1)(c) of the Act. In fact, the Apex Court observed as follows at para 12 of its order:-

“.....It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms ; (i) an item of receipt may be suppressed fraudulently ; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under section 271(1)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature.”

5. In view of the above, this Tribunal is of the considered opinion that a mere claim made by the assessee under Section 35D

of the Act cannot be considered to be furnishing inaccurate particulars of income. In view of the above, we are unable to uphold the orders of the lower authorities. Accordingly, the orders of the lower authorities are set aside and the penalty levied under Section 271(1)(c) of the Act is deleted.

6. In the result, both the appeals of the assessee are allowed.

Order pronounced on 18th December, 2015 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

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

चेन्नई/Chennai,
दिनांक/Dated, the 18th December, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-VI, Chennai
4. आयकर आयुक्त/CIT-VI, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.