

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH: CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1435/Mds/2016  
निर्धारण वर्ष /Assessment Year: 2011-12

Shri Rajaram Seshadri,  
No.123, Chinnakadai Street,  
Tiruvannamalai – 606 601.

**Vs.** The Income Tax Officer,  
Ward-1(6), Vellore.

**[PAN: BRFPS 2796 J]**

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Mr.R.Kumar, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr.Shiva Srinivas, JCIT

सुनवाई की तारीख/Date of Hearing

: 09.01.2017

घोषणा की तारीख /Date of Pronouncement

: 31.01.2017

**आदेश / O R D E R**

**PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:**

This is an appeal filed by the assessee against the Order dated 24.02.2016 of Commissioner of Income Tax (Appeals)-13, Chennai, in ITA No.248/CIT(A)-13/2011-12 for the AY 2011-12.

**2.0** All the grounds of appeal are related to the levy of penalty u/s 271(1)(C) of income tax act. The assessee filed the return of income

declaring total income of Rs.1,98,660/- on 10.01.2012, the case was selected for scrutiny and the assessment was completed on total income of Rs.10,73,660/-. During the assessment proceedings, the AO found the credit of Rs.8,75,000/- in his Savings Bank A/c and the assessee explained the source as gift from his father Shri Raja Ram. The assessee filed copy of Sale Deed as evidence for the source of the gift. The AO verified the bank account and cash flow statement and did not accept the initial cash deposit of Rs.8,75,000/- and made addition u/s.68 of the Income Tax Act. Penalty proceedings u/s.271(1)(c) of the Act was also initiated by the A.O. The AO issued Show Cause Notice to the assessee for levy of penalty u/s 271(1)(c) and the assessee submitted his explanation before the AO, but not being satisfied with the explanation offered by the assessee, the AO imposed penalty of Rs.3.00 lakhs on the said income of Rs.8,75,000/. The assessee went on appeal before the Ld.CIT(A) and the Ld.CIT(A) confirmed the penalty imposed by the AO. Having aggrieved by the order of the Ld.CIT(A), the assessee filed appeal before this Tribunal.

**3.0** Appearing for the assessee Mr.R.Kumar, Advocate submitted that the assessee is a Lecturer in Engineering College having no other source of income except the salary. During the previous year relevant to the AY, there were cash deposits in the Savings Bank A/c of the assessee, the source was explained by the assessee as gift from his father which was received from the sale of land. The assessee also furnished a copy of Sale

Deed as evidence for sale of land to explain the source. The Ld.AR, further, submitted that the AO directed the assessee to produce his father to depose the evidence but the assessee could not produce his father before the AO due to his old-age and accepted the addition to avoid physical inconvenience to his father and to avoid protracted litigation. The Learned Authorized Representative (hereinafter referred to as 'Ld.AR') further argued that the assessee has neither submitted the inaccurate particulars nor concealed the income and submitted all the necessary details and evidences which was not disputed by the AO. The Ld.AR argued that mere acceptance of addition should not lead to imposition of the penalty and relied on the decision of the Hon'ble Madras High Court in the case of SV Kalyanam vs. CIT [2010] ITO 327 ITR 477 (MAD). On the other hand, the Learned Departmental Representative (hereinafter referred to as 'Ld.DR') argued that the assessee has accepted the addition since he has no explanation with regard to the source of the credit and this is a clear case of penalty u/s.271(1)(c) of the Act. The Ld.DR relied on the decision of Hon'ble Supreme Court judgment in the case of MAK Data (P) Ltd. v. CIT. (2014) 1 SCC 674.

**4.0** We heard the rival submissions and perused the material placed before us.

The assessee is a salaried employee having income from salary. During the previous year relevant to the AY 2011-12, there were credits in the bank account and the assessee has explained the source as the gift

received from his father. He has furnished the Sale Deed for sale of land and the evidence for the gifts. The AO did not accept the initial deposit source of Rs.8,75,000/- and the same was made addition u/s.68 of IT Act. Neither in the Assessment Order nor in the Penalty Order, the AO has discussed the date of initial deposit and why the assessee's explanation for source as gifts should not be accepted. The AO has simply rejected the claim of the assessee without any detailed discussion leading to logical conclusion. Therefore, we are of the considered opinion that the assessee's admission of additional income of Rs.8,75,000/- was voluntary to avoid protracted litigation and to avoid inconvenience to his father appears to be true. When the Explanation was submitted by the assessee with a documentary evidence, it is burden on the Revenue to disprove the evidence and Explanation offered by the assessee and make out a case for penalty u/s.271(1)(c) of the Act. In this case, the burden of the assessee has been discharged and the Revenue has not shifted the burden to the assessee. When there was a proper Explanation with the evidence, mere acceptance for addition cannot be a ground to impose penalty u/s.271(1)(c) of the Act. This view is supported by the Hon'ble Madras High Court in the case law cited supra. Therefore, we hold that there is no case for penalty u/s.271(1)(c) of the Act and the orders of the lower authorities are set aside and the penalty levied by the AO u/s.271(1)(c) is cancelled.

**5.0** In the result, the appeal of the assessee is **allowed**.

Order pronounced in the Open Court on 31<sup>st</sup> January, 2017, at  
Chennai.

Sd/-  
(एन.आर.एस. गणेशन)  
**(N.R.S. GANESAN)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-  
(डि.एस. सुन्दर सिंह)  
**(D.S.SUNDER SINGH)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 31<sup>st</sup> January, 2017.

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आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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