

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' 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.671, 672, 673, 674, 675 & 676/Mds/2016

निर्धारण वर्ष / Assessment Years : 2006-07 to 2011-12

Dr. S.F.V. Selvaraj,
No.22, 5th Street,
Dr. Thirumurthy Nagar,
Nungambakkam,
Chennai - 600 034.

v. The Deputy Commissioner of
Income Tax,
Central Circle – 2(5),
Chennai - 600 034.

PAN : AASPS 5404 L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri G. Baskar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri Shiva Srinivas, JCIT

सुनवाई की तारीख/Date of Hearing : 30.05.2016

घोषणा की तारीख/Date of Pronouncement : 15.07.2016

आदेश / O R D E R

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

All these appeals of the assessee are directed against the common order passed by the Commissioner of Income Tax (Appeals) – 18, Chennai, dated 27.01.2016, for the assessment years 2006-07 to 2011-12, confirming the penalty levied by the

Assessing Officer under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. Shri G. Baskar, the Ld.counsel for the assessee, submitted that there was a search operation in the premises of the assessee on 24.11.2011. During the course of search operation, the Revenue authorities found cash of ₹3,45,45,000/-. In response to notice under Section 153A of the Act, the assessee admitted the entire income and paid taxes. The assessee disclosed the entire amount of ₹ 3,45,45,000/-, which was earned in the course of investment in the shares in the return filed under Section 153A of the Act and the same was also accepted by the Assessing Officer without any further addition. However, the Assessing Officer found that the assessee could not explain the difference between the income disclosed in the original return under Section 139(1) of the Act on 31.10.2006 and the income disclosed in the return of income filed under Section 153A of the Act. Accordingly, the Assessing Officer levied penalty under Section 271(1)(c) of the Act. The CIT(Appeals) has also confirmed the penalty levied by the Assessing Officer under Section 271(1)(c) of the Act referring to Explanation 5A(a) of the Act. The Ld.counsel submitted that this Bench of the Tribunal

in DCIT v. Lakshmi Ceramics in I.T.A. No.1033/Mds/2014, on identical set of facts, found that when there was search and the assessee filed return of income disclosing all the income, penalty cannot be levied. In the case before this Tribunal in Lakshmi Ceramics (supra), a revised return was filed by the assessee, which was admitted by the Assessing Officer. In the case before us, the return filed consequent to the notice issued under Section 153A of the Act was accepted and no further addition was made. Therefore, according to the Ld. counsel, the case of the present assessee is better than the case before this Tribunal in Lakshmi Ceramics (supra).

3. Again referring to the order of this Tribunal in Lakshmi Ceramics (supra), the Ld.counsel for the assessee submitted that power to levy penalty under Section 271(1)(c) of the Act is one thing and exercise of that power is another thing. The Tribunal ultimately found that power of the Assessing Officer to levy penalty has to be exercised judiciously in appropriate cases and when the assessee filed return of income by way of revised return and no other addition was made, levy of penalty is not justified. According to the Ld. counsel, in view of this order of the co-ordinate Bench of this

Tribunal, the CIT(Appeals) is not justified in confirming the penalty levied by the Assessing Officer.

3. On the contrary, Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that the assessee filed return of income in the regular course. However, the income generated out of share transaction was not disclosed in the regular return. Consequent to the search operation, a notice was issued under Section 153A of the Act and the assessee has filed return disclosing all the income. The Assessing Officer, in fact, accepted the return filed by the assessee under Section 153A of the Act. According to the Ld. D.R., the assessee has not disclosed entire income in the return filed on 31.10.2006 under Section 139(1) of the Act. When the assessee has not disclosed entire income in the original return filed before the date of search, it is for the assessee to explain why he could not disclose the entire income in the original return. Since no explanation was forthcoming, the Assessing Officer found that there was concealment of income, therefore, according to the Ld. D.R., the Assessing Officer levied the penalty under Section 271(1)(c) of the Act and the CIT(Appeals) has rightly confirmed the same.

4. We have considered the rival submissions on either side and perused the relevant material available on record. From the orders of the lower authorities it appears that the assessee is a medical practitioner by profession. The assessee had filed return of income in the regular course under Section 139(1) of the Act. During the course of search operation, the Revenue authorities found cash in the premises of the assessee. In fact, the assessee admitted the entire amount as income while filing return of income consequent to the notice issued under Section 153A of the Act. The claim of the assessee is that the cash found was from medical profession or transaction of purchase and sale of shares. The Assessing Officer accepted the entire income disclosed in the return filed under Section 153A of the Act without any further addition. The question arises for consideration is when the return filed by the assessee under Section 153A of the Act was accepted by the Assessing Officer without further addition, can we say there was concealment of income under Section 271(1)(c) of the Act? This fact was examined by this Tribunal in Lakshmi Ceramics (supra). In the case of Lakshmi Ceramics (supra) also, there was search operation under Section 132 of the Act. This Tribunal found that power to levy penalty under Section 271(1)(c) of the Act is one thing and exercise

of that power is another thing. This Tribunal further found that when the return of income was accepted by the Assessing Officer without any further addition, exercising the power to levy penalty is not justified and accordingly, the penalty was deleted by this Tribunal. In this case also, the return filed by the assessee consequent to the notice issued under Section 153A of the Act was accepted and no further addition was made.

5. We have carefully gone through the provisions of Section 271AAA of the Act. Section 271AAA was, in fact, introduced in the statute book by Finance Act, 2007 with effect from 01.04.2007. As per this Section, in respect of search initiated under Section 132 of the Act on or after 01.06.2007 but before 01.07.2012, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him at the rate of 10% of undisclosed income. Sub-section 3 of Section 271AAA of the Act clearly says that no penalty under the provisions of Section 271(1)(c) shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1). In the case before us, the search was admittedly made on 24.11.2011. In respect of search carried on or after 01.06.2007 but before 01.07.2012, the penalty, if any, has to be levied only under Section

271AAA of the Act and not under Section 271(1)(c) of the Act in view of Section 271AAA(3) of the Act. Therefore, this Tribunal is of the considered opinion that initiation of penalty proceeding under Section 271(1)(c) of the Act is not justified at all. In view of the above discussion, this Tribunal is unable to uphold the orders of the authorities below and accordingly, same are set aside and the penalty levied by the Assessing Officer as confirmed by the CIT(Appeals) is deleted.

6. In the result, all the appeals filed by the assessee are allowed.

Order pronounced on 15th July, 2016 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 15th July, 2016.
Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--|--------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent |
| 3. आयकर आयुक्त (अपील)/CIT(A)-18, Chennai | |
| 4. Principal CIT, Central-2, Chennai | |
| 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |