

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.2205/Mds/2016

निर्धारण वर्ष /Assessment year : 2008-2009

Shri. R. Balakrishnan,
Prop: Rasu Pillai & Sons,
143, Thiagamudaliar Street,
Puducherry 605 001.

Vs.

The Income Tax Officer,
Ward I(1)
Pondicherry.

[PAN AAPPB 6828C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. S. Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri. Supriyo Pal, IRS, JCIT
सुनवाई की तारीख/Date of Hearing : 13-10-2016
घोषणा की तारीख /Date of
Pronouncement : 28-10-2016

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

In this appeal filed by the assessee, its grievance on levy of
penalty of ₹1,00,355/- u/s.271(1)(c) of the Act.

2. Facts apropos are that assessee a wholesale merchant in vegetables had filed a return disclosing an income of ₹3,30,410/-. During the course of assessment, it was noticed that assessee had deposits in a bank account with ING Vyasa Bank, Pondicherry. Assessing Officer found that some of the transactions in this bank account were not shown in the books of accounts of the assessee. When this was put to assessee, it seems he agreed for the addition of peak credit in this bank account. The Peak credit came to ₹2,38,350/- and an addition of said amount was made. Further, Assessing Officer also made an addition for low gross profit rate. Addition on the gross profit came to Rs.60,206/-. Aggregate addition came to ₹2,98,556/-. Thereafter notice u/s.271(1) (c) r.w.s 274 of the Act was issued to the assessee seeking reason why penalty should not be levied under the former section. Reply of the assessee was that he was a vegetable merchant and had used his account in ING Vyasa for personal purpose also. As per assessee said account being personal account he had not incorporated the entries therein in its books of accounts. However, Assessing Officer did not accept the above contention. According to him, there was concealment of income to the extent of peak credit in the said bank account. He levied a penalty of 100% of the tax sought to be levied which came to ₹1,00,355/-.

- 3.** Assessee moved in appeal before Id. Commissioner of Income Tax (Appeals) but did not meet with any success.
- 4.** Now before us, Id. Authorised Representative submitted that assessee has agreed for the addition not because it was part of his business receipts but only since assessee wanted to maintain peace with Department. As per Id. Authorised Representative there was no concealment of income.
- 5.** Per contra, Id. Departmental Representative strongly supported the orders of the authorities below.
- 6.** We have considered the rival contentions and perused the orders of the authorities below. The findings of the Assessing Officer in penalty order is that there was concealment of income to the extent of deposits made by the assessee in its bank account in ING Vyasa. The peak credit came to ₹2,38,350/-. Assessee had given an explanation that the said account was used for his personal purpose and this was the reason why entries thereon were not recorded in the books of accounts of his business. Admittedly, assessee was running a proprietary concern called Rasu Pillai & Sons selling vegetables. It is not required that every personal account maintained by an assessee in a bank should be reflected in the books of his business. Nothing stops

the assessee who is an individual to maintain a bank account for personal use which is not connected to his business. There is no finding by the lower authorities that credits in the bank account were unexplained income of the assessee. They had made the addition of peak credit just because assessee accepted it. This would not mean that there was a concealment that would attract the rigours of Sec. 271(1) (c) of the Act. We are of the opinion that this was not a fit case for levy of penalty. Penalty levied stands deleted.

7. In the result, the appeal of the assessee is allowed.

Order pronounced on Friday, the 28th day of October, 2016, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:28th October, 2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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