

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.1627, 1628, 1629, 1630, 1631 &
1632/Mds/2014

निर्धारण वर्ष / Assessment Years : 1999-2000 to 2004-05

Dr. C.N. Rajadurai,
48, Sivan Koil Street,
Kodambakkam,
Chennai - 600 024.

v. The Assistant Commissioner
of Income Tax,
Central Circle II,
Madurai.

PAN : AETPR 1746 K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh.V.S. Jayakumar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Sh. N. Rengaraj, CIT

सुनवाई की तारीख/Date of Hearing : 11.06.2015

घोषणा की तारीख/Date of Pronouncement : 03.07.2015

आदेश /O R D E R

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

All the appeals of the assessee are directed against the common order passed by the Commissioner of Income Tax (Appeals)-I, Madurai, dated 28.03.2014 and pertain to assessment

years 1999-2000, 2000-01, 2001-02, 2002-03, 2003-04 and 2004-05. Since common issue arises in all these appeals, we heard these appeals together and disposing of by this common order.

2. Shri V.S. Jayakumar, the Ld.counsel for the assessee, submitted that the Assessing Officer levied penalty under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). The assessee, a medical practitioner in Ayurvedha and Siddha, filed the return of income under Section 153A consequent to search. For the assessment year 1999-2000, the assessee filed return on 17.12.1999 before the date of search, in the regular course, disclosing a total income of ₹77,823/-. After the search, the assessee filed return under Section 153A of the Act disclosing professional income of ₹1,97,820/- and agricultural income of ₹40,000/-. The Assessing Officer accepted the return filed by the assessee under Section 153A of the Act. However, the Assessing Officer found that there was a difference between the income disclosed in the return filed under Section 153A of the Act and the return filed before the date of search, of ₹1,20,997/-. The Assessing Officer found that there was a concealment of income. According to the Ld. counsel, no cash was seized during the course of search operation under Section 132 of the Act with regard to income.

Therefore, when the assessee filed the return under Section 153A of the Act, all the income which were admitted and disclosed under Section 132(4) of the Act cannot be a basis for levy of penalty. Even otherwise, when the assessee filed return disclosing all the income and no addition was made, there cannot be any levy of penalty in view of the decision of the Rajkot Bench of the Tribunal in ACIT v. Shri Shantilal Jerambhai Maheswari in I.T.A. No.68/Rjt/2009 dated 27th May, 2011, a copy of the order is available at page 12 of the paper-book. The Ld.counsel further submitted that other than registration charges of ₹1000/- for the assessment year 1999-2000, all other income disclosed were admitted. No addition was made. Similarly, for other assessment years also, no such additions were made. Hence, according to the Ld. counsel, it is not a case for levy of penalty. The Ld.counsel has also placed his reliance on the decision of the Delhi Bench of this Tribunal in Sita Ram Gupta v. ACIT in I.T.A. No.1835/Del/2013 dated 30.06.2014.

3. On the contrary, Shri N. Rengaraj, the Ld. Departmental Representative, submitted that the assessee has to explain why the income could not be disclosed in the original return filed before the date of search. Since incriminating materials were found during the

course of search operation, the assessee has disclosed all the income. In the absence of explanation, according to the Ld. D.R., the Assessing Officer has rightly levied penalty which was confirmed by the CIT(Appeals).

4. We have considered the rival submissions on either side and perused the relevant material on record. For the assessment year 1999-2000, the assessee filed return of income on 17.12.1999 disclosing income of ₹77,823/-. The search was admittedly conducted on 6.08.2004, after expiry of the time limit provided for issuing of notice under Section 143(2) of the Act. Therefore, the assessment proceeding on the basis of return of income filed on 17.12.1999 is not pending. In other words, the assessment proceedings on the basis of return filed on 17.12.1999 is terminated by operation of law. Therefore, the Assessing Officer has to pass assessment order for the block period on the basis of the material found during the course of search. In the penalty proceeding, it is for the assessee to explain why the income cannot be disclosed in the original return. Now the assessee claims privilege under Section 132(4) read with Explanation 5 to Section 271(1)(c) of the Act. The Ld.counsel, by placing reliance on the decision of Delhi Bench of this Tribunal in *Sita Ram Gupta v. ACIT* in I.T.A.

No.1835/Del/2013 dated 30th June, 2014, a copy of which is available at page 14 of the paper-book, submitted that when no question was asked by the revenue authorities, it is a presumption that the assessee had disclosed all income under Section 132(4) of the Act. We have carefully gone through the order of the Delhi Bench of the Tribunal (supra). The Delhi Bench found that unless the authorized officer puts a specific question with regard to the manner in which the income has been derived, while examining under Section 132(4) of the Act, it is not expected from the person to make a statement in this regard. The Delhi Bench has also observed that mere non-statement of the manner in which such income was derived would not make Explanation 5(2) inapplicable. The Delhi Bench has also placed its reliance on the judgment of the Gujarat High Court in CIT v. Mahendra C. Shah (2008) 299 ITR 305. We have carefully gone through statement said to be recorded from the assessee on 06.08.2004 during the course of search operation under Section 132(4) of the Act. In response to question No.20, at page 29 of the paper-book, the assessee accepted the income of ₹26 lakhs for the financial year 2002-03. The assessee has also offered and accepted a sum of ₹75 lakhs per year. For the period from 1.4.2004 to 30.7.2004, the assessee accepted that the receipt comes to nearly ₹25 lakhs and offered the same for taxation

in the current year. For the purpose of convenience, we are reproducing Question No.20 and answer of the assessee:-

“Q.20: According to the said case sheets the total for Chennai, Trichy, Salem, Coimbatore, comes to 1.1 crore approximately and for other Mofussil stations by adopting an average amount of ₹60 lakhs the total comes to ₹1.70 Crores for the period from 1.5.2002 to till date. The average receipts for 1 assessee month work out to ₹6.20 lakhs. Hence for the FY 1.5.2002 to 31.3.2003 (Except 1 month) the total receipts works out to ₹70,00,000 approximately.

For the next FY 2003-04 the total receipts work out to ₹77.55 lakhs for the period from 1.4.2004 to 30.7.2004 works out to ₹25 lakhs (i.e. for 4 months) so it could be seen from the above that the total receipts for the period from 1.5.2002 to 31.3.2002 works out to ₹70 lakhs but you had admitted in the statement only ₹44.4 lakhs. Therefore, there is a clear suppression of ₹26.00 lakhs approximately. What is your explanation for this?

Ans: I accept that there is suppression of ₹26 lakhs for the FY 2002-03 for the subsequent FY's I have not filed the returns. I will accept the receipt @ ₹75 lakhs per year and will offer the same as unaccounted receipts. For the period from 1.4.2004 to 30.7.2004 (current year) the receipts comes to ₹25 lakhs and the same will be admitted for the current year.”

5. In view of the above, it is to be examined whether the assessee is eligible for privileges provided in Explanation 5 to Section 271(1)(c) of the Act. Both the authorities below had no occasion to examine the same. Therefore, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the

Assessing Officer. Accordingly, the orders of the authorities below are set aside and the entire issue of levy of penalty is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the issue afresh in the light of the explanation offered by the assessee under Section 132(4) of the Act, judgment of the Gujarat High Court in Mahendra C. Shah (supra) and the decision of the Delhi Bench of this Tribunal in Sita Ram Gupta (supra), after giving reasonable opportunity to the assessee.

6. In the result, all the six appeals of the assessee are allowed for statistical purposes.

Order pronounced on 3rd July, 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 3rd July, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

अपीलार्थी/Appellant / प्रत्यर्थी/Respondent / आयकर आयुक्त (अपील)/
CIT(A)-I, Madurai / आयकर आयुक्त/CIT, Central-II, Chennai /
विभागीय प्रतिनिधि/DR / गार्ड फाईल/GF.