

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

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

आयकर अपील सं./ITA No.433/Mds/2016

निर्धारण वर्ष /Assessment Year : 2009-10

Shri. Mahaveer Chand,
Proprietor: M/s. Arihant Jewellers,
No.38/145, North Usman Road,
T.Nagar, Chennai – 600 017.

Joint Commissioner of Income Tax,
v. Range II, Madurai.

PAN : AEOPM0188B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

:

Shri. D.Anand, Advocate

प्रत्यर्थीकीओरसे/Respondent by

:

Shri. Shiva Srinivas

सुनवाईकीतारीख/Date of Hearing

:

28.07.2016

घोषणाकीतारीख/Date of Pronouncement

:

15.09.2016

आदेश / O R D E R

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

This appeal of the assessee is directed against the order of CIT(A) -2, Chennai dated 11.11.2015 and pertains to Assessment Year 2009-10.

2. Shri. D.Anand, the learned counsel for the assessee submitted that the CIT(A) confirmed the penalty levied by the Assessing Officer under Section 271(1)(c) of the Act. According to the learned counsel, there was a survey in the premises of M/s.Arihant Jewellers under Section 133A of the Act on 26.06.2008. The assessee is the proprietor of M/s.Arihant Jewellers. During the course of survey operation, the revenue authorities found that the stock of gold jewellery as per the books of account was 22,305.129 grams. On physical verification, the revenue authorities found only 20,250.830 gms. of gold jewellery. According to the revenue, there was a shortage of 2054.299 grams of gold jewellery. The assessee explained before the assessing officer, the shortage was due to non consideration of the jewellery given to the customers on approval basis on the date of survey. The assessing officer however rejected the claim of the assessee and levied penalty.

3. Referring to the order of the assessing officer, the learned counsel for the assessee submitted that the revenue authorities also found an excess cash of Rs.8,41,077/-. The assessee explained before the assessing officer that the excess cash was advance received from the customers against the goods given on approval basis. This explanation of the assessee also was rejected by the assessing officer without any reasonable cause. Therefore, the assessee according to

the learned representative discharged his obligation. Hence, there cannot be any penalty under Section 271(1)(c). Referring to the judgment of the Madras High Court in CIT Vs. Gem Granites reported in (2013) 86 CCH 0160 ChenHC, a copy of which is filed by the assessee submitted that when the assessee offered an explanation with regard to the shortage of gold jewellery and the excess cash, the burden of proof shifts on the shoulders of the revenue. If the revenue could not agree with explanation of the assessee, then it is for the revenue to prove that there was a concealment of the particulars of income or the assessee has furnished inaccurate particulars of his income. The onus which was shifted on the revenue was not discharged. Therefore, the CIT(A) is not justified in confirming the penalty levied by the Assessing Officer.

4. On the contrary, Shri Shiva Srinivas, the learned representative for the department submitted that, admittedly during the course of survey operation, the revenue authorities found the shortage of gold jewellery and excess cash. Therefore, the presumption is that the assessee has sold jewellery outside the books of accounts and an attempt was made to conceal the assessee's income. The assessee claimed before the assessing officer that the assessee voluntarily offered the excess gold jewellery and the excess cash found for taxation. This explanation of the assessee was not accepted by the assessing officer. The shortage of gold jewellery and excess cash was

found by the revenue authorities only during the course of survey conducted by the revenue in the premises of the assessee. Therefore, it cannot be considered that the assessee has voluntarily offered the value of the deficient stock in gold jewellery and the excess cash found during the course of survey operation. Therefore, the CIT(A) has rightly confirmed the penalty levied by the Assessing Officer.

5. We have considered the rival submissions on either side and also perused the material available on record. During the course of survey operation, a statement was recorded from the assessee. The Assessing Officer in fact extracted the answer of the assessee at paragraph 3 of the impugned order of the assessment. The assessee explained before the assessing officer even at the time of survey that the deficient stock in gold jewellery was because of the gold jewellery given to the customers on approval basis. With regard to the excess cash, the assessee explained during the examination under Section 131 of the Income Tax Act that it was received from customers to whom the jewellery was given on approval basis. This is the statement made by the assessee during the course of survey operation. Therefore, it cannot be said that the assessee has not offered any explanation for the deficiency in gold jewellery and excess cash found during the course of survey operation. Therefore, the burden of proof shifts on the shoulder of the revenue as found by the Madras High Court in the case of Gem

Granites cited supra. It is for the revenue to investigate further and find out whether the explanation offered by the assessee was true or not. The assessing officer has not taken any pain to make further investigation in order to ascertain the correctness of the explanation offered by the assessee. Therefore, this Tribunal is of the considered opinion that the levy of penalty on the assessee is not justified.

6. It is well settled principles of law that the assessment proceedings and penalty proceedings are separate and independent. Even though, the assessee agrees for addition in the assessment proceedings, the assessing officer was expected to re-examine the material available on record during the penalty proceedings. In the case before us, the assessing officer as well as CIT (A) found that the deficient stock and excess cash was found during the course of survey operation. Therefore, it is not a case of voluntary disclosure. This Tribunal is of the considered opinion that when the assessee explained before the assessing officer that the jewellery was given to the customers on approval basis and the advance money was collected and this was not found to be false by the assessing officer, there is no justification for levy of penalty by the Assessing Officer under Section 271(1)(c) of the Act.

7. In view of above discussion, this Tribunal is unable to uphold the orders of lower authorities. Accordingly, the orders of both the authorities below are set aside and the penalty levied by the assessing officer as confirmed by CIT(A) under Section 271(1)(c) is deleted.

8. In the result, the appeal of the assessee stands allowed.

Order pronounced on 15th September, 2016 at Chennai.

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. Sunder Singh)
लेखा सदस्य/Accountant Member

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

चेन्नई/Chennai,
दिनांक/Dated, the 15th September, 2016.

sp.

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.