

आयकर अपीलीय 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 केसमक्ष

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

आयकर अपील सं./ITA No. 1100/Mds/2015

&

**C.O. No.91/Mds/2015**

(in I.T.A. No.1100/Mds/2015)

निर्धारण वर्ष / Assessment Year : 2010-11

The Deputy Commissioner of  
Income Tax,  
Circle-I, Palani Road,  
Kottapatti Post, Dindigul-624 002.

(अपीलार्थी/Appellant)

v. Smt. Sedipoun,  
188, Anna Nagar, Palani-624 601.  
Dindigul District.

PAN : AIIPS 2319 A

(Respondent & Cross-objector)

अपीलार्थी की ओर से/Appellant by : Shri Shiva Srinivas, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri G. Baskar, Advocate

सुनवाई की तारीख/Date of Hearing : 20.09.2016

घोषणा की तारीख/Date of Pronouncement : 07.10.2016

### **आदेश /O R D E R**

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) – I, Madurai, dated 16.02.2015 and pertains to assessment year 2010-11, deleting the penalty levied by the Assessing Officer under Section 271(1)(c) of

the Income-tax Act, 1961 (in short "the Act"). The assessee has filed cross-objection. We heard both the appeal and cross-objection together and disposing of the same by this common order.

2. Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that there was a survey in the partnership concern of the assessee. During the course of survey, the assessee's husband Shri K. Subramanian accepted in his statement that the net profit for all the four concerns was ₹2,10,69,826/-. For the assessment year under consideration, the assessee has disclosed ₹54,00,000/-. But for survey, this amount of ₹54,00,000/- could have gone unnoticed by the Revenue. Therefore, the Assessing Officer levied penalty under Section 271(1)(c) of the Act. On appeal by the assessee, the CIT(Appeals) deleted the addition on the ground that the return filed by the assessee has to be construed on the assessee's own violation. But for the search, according to the Ld. D.R., the assessee would not have disclosed a sum of ₹54,00,000/-. On a query from the Bench, when a statement recorded during the survey operation has no evidentiary value in the assessment proceeding, whether the Revenue has any other material other than the statement recorded from the assessee's husband? The Ld. D.R.

clarified that some of the incriminating material were found during the course of survey operation.

3. The Ld. Departmental Representative further submitted that the survey was conducted on 17.02.2010 in the partnership concern of the assessee. On a query from the Bench, the Ld. D.R. clarified that the assessee is a regular assessee and filing return of income in the regular course for all the earlier assessment years. For the assessment year under consideration, the Ld. D.R. clarified that due date for filing of return under Section 139(1) of the Act has not expired. In other words, the financial year has not ended. The Ld. D.R. further submitted that the provisional Profit & Loss account was found during the course of survey. The same was impounded. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in deleting the penalty levied by the Assessing Officer.

4. On the contrary, Shri G. Baskar, the Ld. counsel for the assessee, submitted that there was a survey in the partnership firm of the assessee on 17.02.2010. Admittedly, the financial year has not ended on the date of survey. The statement said to be recorded from the assessee's husband had no evidentiary value in the assessment proceeding. On the basis of provisional Profit & Loss

account, the assessee herself filed return of income and paid taxes and no disallowance was made in respect of the amount disclosed by the assessee.

5. Referring to the assessment order, the Ld.counsel for the assessee submitted that what was disallowed by the Assessing Officer is Pooja expenses and agricultural income, which was treated as income from other sources, for which the Assessing Officer has not levied any penalty at all. Referring to Section 271(1)(c) of the Act, the Ld.counsel submitted that penalty under Section 271(1)(c) of the Act could be levied in case the assessee has concealed any part of income or furnished inaccurate particulars of such income. In the case before the Tribunal, according to the Ld. counsel, it is nobody's case that the assessee concealed any part of income. The provisional Profit & Loss account said to be impounded by the Revenue was prepared on the basis of books of account and the assessee has also paid taxes. Therefore, according to the Ld. counsel, there is no question of concealment of income or furnishing of inaccurate particulars.

6. Referring to Explanation 3 to Section 271(1)(c) of the Act, the Ld.counsel for the assessee submitted that Explanation 3 to Section

271(1)(c) of the Act is not applicable in this case since the assessee was filing return of income in the regular course. During the year under consideration, the assessee has filed return of income on 08.10.2010 which is within the time provided under Section 139(1) of the Act. According to the Ld. counsel, when the assessee has filed return of income under Section 139(1) of the Act disclosing all the income and no addition was made in respect of the income disclosed other than the Pooja expenses and agricultural income, the CIT(Appeals) has rightly deleted the penalty levied by the Assessing Officer. The Ld.counsel placed his reliance on the decision of this Bench of the Tribunal in ACIT v. Ram Thanga Nagai Maligai (2015) 42 ITR (Trib) 275. According to the Ld. counsel, there was no concealment of income or any inaccurate particulars of such income in the return filed by the assessee, therefore, the CIT(Appeals) has rightly deleted the penalty levied by the Assessing Officer.

7. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, there was survey operation under Section 133A of the Act on 17.02.2010 in the business premises of the assessee. During the course of

survey operation, a statement was recorded from the assessee's husband. During the course of survey operation, the Revenue authorities did not administer oath to the deponent. Therefore, the statement recorded during the course of survey operation has no evidentiary value. However, in the case before us, the Revenue authorities found a provisional Profit & Loss account, which was impounded. As per the provisional Profit & Loss account, the assessee has offered a sum of ₹54,00,000/- by the assessee. The return of income for the year under consideration was filed within the extended time for filing the return under Section 139(1) of the Act. When the assessee has filed within the extended time under Section 139(1) of the Act and disclosed all the income, this Tribunal is of the considered opinion that there cannot be any concealment of income.

8. As rightly submitted by the Ld.counsel for the assessee, the Assessing Officer disallowed only Pooja expenses and agricultural income for which no penalty was levied. The income disclosed by the assessee on the basis of Profit & Loss account was accepted by the Revenue authorities. While examining an identical set of facts by this Tribunal in Ram Thanga Nagai Maligai (supra), this Tribunal

found that the assessee has not concealed any income or furnished inaccurate particulars in the return filed before the Revenue. The Tribunal has also found that Explanation 3 to Section 271(1)(c) of the Act is not applicable to the facts of the case. In view of those factual circumstances, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly deleted the penalty levied by the Assessing Officer.

8. The cross-objection filed by the assessee is only to support the order of the CIT(Appeals). Therefore, the cross-objection is infructuous.

9. In the result, the appeal of the Revenue is dismissed and the cross-objection of the assessee also stands dismissed as infructuous.

Order pronounced on 7<sup>th</sup> October, 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 7<sup>th</sup> October, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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