

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'C' 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

आयकरअपीलसं./I.T.A.No.2060/Mds/2016

(निर्धारणवर्ष / Assessment Year: 2007-08)

Mr. Veerappan Sivakumar, 37 Old No.16, Balaji Nagar, 1 st Street, Royapettah, Chennai-14.	Vs	The Income Tax Officer, International Taxation-2(2), Chennai-34.
PAN:AAHPS8804R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. B.Ramakrishnan, FCA
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. A.V.Sreekanth, JCIT

सुनवाईकीतारीख/Date of hearing	:	9 th January, 2017
घोषणाकीतारीख /Date of Pronouncement	:	10 th January, 2017

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

This appeal is filed by the assessee aggrieved by the order of the learned Commissioner of Income Tax (Appeals)-16, Chennai dated 31.05.2016 in ITA No.74/CIT(A)-16/2007-08 passed under section 271(1)(c) r.w.s. 250(6) of the Act.

2. The assessee has raised several grounds in his appeal, however the crux of the issue is as follows:-

“The learned Commissioner of Income Tax (Appeals) has erred in confirming the minimum penalty of Rs.4,37,400/- levied by the learned Assessing Officer under section 271(1)(c) of the Act.”

3. Brief facts of the case are that the assessee is an individual filed his return of income admitting total income of Rs.3,50,640/- on 31.07.2007. Subsequently, the case was reopened under section 147 of the Act and finally assessment was completed under section 143(3) of the Act on 20.03.2013, wherein the learned Assessing Officer disallowed a portion of the deduction claimed under section 54F of the Act. During the course of assessment proceedings, it was observed by the learned Assessing Officer that the assessee had jointly sold his 1/3rd share in the property and thereafter purchased residential property jointly and his share was 1/3rd, however he claimed deduction u/s.54F of the act for the entire amount of Rs.65,79,698/-. The learned Assessing Officer queried as to why deduction under section 54F should not be restricted to 1/3rd of the total amount invested in the property. The learned Authorized Representative argued before the learned Assessing Officer that nowhere in the Act it is stated that the new property should be purchased in the name of the assessee. Reliance was placed in the decision of the Hon'ble Delhi High Court in the case CIT Vs. Ravindra Kumar Arora vs. CIT reported in

342 ITR 38. However, the learned Assessing Officer opined that the assessee would be entitled for deduction under section 54F of the Act only with respect to his share in the purchase of the property and restricted the deduction to Rs.32,21,442/-. Thereafter the Ld.A.O invoked the provisions of Section 271(c) of the Act and levied minimum penalty of Rs. 4,73,400/-.

4. On appeal, the learned Commissioner of Income Tax (Appeals) confirmed the order of the learned Assessing Officer by observing as under:-

"I have given careful consideration to the case laws cited by the appellant as referred above and they are found to be clearly distinguishable hence the penalty is decided as under:

The assessee sold the property during the FY 2012-13 for a total sale consideration of Rs.3,65,00,000/- . The assessee admitted in the return of income 1/3rd of sale consideration on his account at Rs.94,93,232/-. The assessee had 1/3rd share is also upheld by the Hon'ble ITAT. Assessee had jointly invested for purchase of a property to claim deduction u/s.54F of a total property value at Rs.13500000/- and in this investment the assessee had 1/ 3rd of share in the property that clearly shows that assessee has had knowledge that investment u/s.54F to his share at 1/3rd value comes at Rs.45,00,000/- ,however assessee had claimed deduction u/s.54F at

Rs.63,00,000/-plus proportionate stamp duty and registration charges at Rs.5,67,000/- totaling to Rs.68,67,000/-.Thus-it: is crystal clear that assessee has not only made excess claim of deduction u/s.54F but also furnished inaccurate particulars of income leading to concealment of income. Therefore I uphold the action of the AO levying penalty u/s.271 (1)(c) of the Act for assessee having furnished inaccurate particulars of income amounting to concealment of income @ 100% of minimum of RS.4,73,400/-. The grounds of appeal of the assessee on this issue is therefore dismissed.”

5. Before us, the learned Authorized Representative submitted that the assessee had disclosed the entire transaction in his return of income and therefore did not conceal any particulars of his income or furnished inaccurate particulars of such income. He further submitted that the assessee had relied on various case laws and under bonafide belief had claim deduction under section 54F of the Act. It was therefore pleaded that though the additions may be sustainable, it is not a fit case for levying of penalty. The learned Authorized Representative also pointed out that the learned Assessing Officer's notice dated 20.03.2013 is defective and inappropriate.

6. The learned Departmental Representative on the other hand argued in support of the orders of the Revenue authorities and requested for confirming the penalty levied by the learned Assessing Officer.

7. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case it is apparent that the assessee has only made a bonafide claim of deduction under section 54F of the Act relying upon certain decisions which cannot be simply brushed aside. In this context, we are reminded of the decision rendered by the Hon'ble Apex Court in the case of CIT Vs. Reliance Petroproducts P.Ltd., reported in 322 ITR 158(SC). The Hon'ble Apex Court had held that *"a mere making of claim which is not sustainable in law, be itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing of inaccurate particulars."*

8. Following the decision of the Hon'ble Apex Court, we are of the considered view that the penalty levied by the

learned Assessing Officer which is further confirmed by the learned Commissioner of Income Tax (Appeals) is not sustainable. Therefore, we hereby direct the learned Assessing Officer to delete the minimum penalty of Rs. 4,37,400/- levied by the learned Assessing Officer.

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

Order pronounced in the open court on the 10th January, 2017

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S.Ganesan)

न्यायिक सदस्य /Judicial Member

Sd/-

(ए. मोहन अलंकामणी)

(A.Mohan Alankamony)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Date: 10.01. 2017

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