

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 No.2450/Chny/2016

निर्धारण वर्ष / Assessment Year : 2012-13

Shri S. Ashok Kumar,  
No.425, Big Bazaar Street,  
Trichy – 620 008.

PAN : AAFPA 7547 R

(अपीलार्थी/Appellant)

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

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.2451/Chny/2016

निर्धारण वर्ष / Assessment Year : 2012-13

Shri S. Ashok Kumar (HUF),  
No.37, Chinna Chetty Street,  
Trichy – 620 008.

PAN : AADHS 5118 N

(अपीलार्थी/Appellant)

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

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.2452/Chny/2016

निर्धारण वर्ष / Assessment Year : 2012-13

Smt. A. Geetha,  
No.37, Chinna Chetty Street,  
Trichy – 620 008.

PAN : AARPG 6847 R

(अपीलार्थी/Appellant)

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

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.2386/Chny/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

Shri V. Damotharan (HUF),  
No.60, Nadu Gujili Street,  
Trichy – 620 008.v. The Assistant Commissioner of  
Income Tax,  
Central Circle – II,  
Trichy.PAN : AAFHD 6579 L  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.2387/Chny/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

Shri G. Prasanna,  
No.22, Chinna Chetty Street,  
Trichy – 610 008.v. The Assistant Commissioner of  
Income Tax,  
Central Circle – II,  
Trichy.PAN : AIPPP 7409 R  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.2388/Chny/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

Shri V. Ramesh (HUF),  
No.49, Big Chetty Street,  
Trichy – 620 008.v. The Assistant Commissioner of  
Income Tax,  
Central Circle – II,  
Trichy.PAN : AALHR 6710 B  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.2389/Chny/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

Shri V. Harikrishnan (HUF),  
No.49, Big Chetty Street,  
Trichy – 620 008.v. The Assistant Commissioner of  
Income Tax,  
Central Circle – II,  
Trichy.PAN : AADHH 3040 Q  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.2390/Chny/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

Smt. G. Ananthi,  
No.22, Chinna Chetty Street,  
Trichy – 620 008.v. The Assistant Commissioner of  
Income Tax,  
Central Circle – II,  
Trichy.PAN : AANPG 0636 P  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.2391/Chny/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

Shri V. Harikrishnan,  
No.49, Big Chetty Street,  
Trichy – 620 008.v. The Assistant Commissioner of  
Income Tax,  
Central Circle – II,  
Trichy.PAN : ABCPH 2018 L  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.2392/Chny/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

Smt. H. Pradeepa,  
No.49, Big Chetty Street,  
Trichy – 620 008.v. The Assistant Commissioner of  
Income Tax,  
Central Circle – II,  
Trichy.PAN : BBOPP 8159 D  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.2393/Chny/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

Smt. S. Kamala,  
No.37, Chinna Chetty Street,  
Trichy – 620 008.v. The Assistant Commissioner of  
Income Tax,  
Central Circle – II,  
Trichy.PAN : AAFPK 5757 M  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.2394/Chny/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

Shri V. Damotharan,  
No.49, Big Chetty Street,  
Trichy – 620 008.v. The Assistant Commissioner of  
Income Tax,  
Central Circle – II,  
Trichy.PAN : ACMPD 1188 Q  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.2395/Chny/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

Smt. R. Maheswari,  
No.49, Big Chetty Street,  
Trichy – 620 008.v. The Assistant Commissioner of  
Income Tax,  
Central Circle – II,  
Trichy.PAN : AFOPM 4950 N  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.2396/Chny/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

Smt. P. Saranya,  
No.22, Chinna Chetty Street,  
Trichy – 620 008.v. The Assistant Commissioner of  
Income Tax,  
Central Circle – II,  
Trichy.PAN : CCSPS 6887 B  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.2397/Chny/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

Smt. V. Kamalaveni,  
L/H Shri N. Vishwanathan,  
No.425, Big Bazaar  
Trichy – 620 008.v. The Assistant Commissioner of  
Income Tax,  
Central Circle – II,  
Trichy.PAN : AAEPV 0055 E  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.2398/Chny/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

Shri V. Ramesh,  
No.49, Big Chetty Street,  
Trichy – 620 008.v. The Assistant Commissioner of  
Income Tax,  
Central Circle – II,  
Trichy.PAN : AAGPR 5292 K  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.2399/Chny/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

Shri N. Vishwanathan,  
No.425, Big Bazaar,  
Trichy – 620 008.v. The Assistant Commissioner of  
Income Tax,  
Central Circle – II,  
Trichy.PAN : AADPV 8707 E  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.2400/Chny/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

Shri S. Ganapathy,  
No.22, Chinna Chetty Street,  
Trichy – 620 008.v. The Assistant Commissioner of  
Income Tax,  
Central Circle – II,  
Trichy.PAN : AAIPG 8991 Q  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.2401/Chny/2016**

निर्धारण वर्ष / Assessment Year : 2012-13

Shri G. Prasanna (HUF),  
No.22, Chinna Chetty Street,  
Trichy – 620 008.v. The Assistant Commissioner of  
Income Tax,  
Central Circle – II,  
Trichy.PAN :  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by : Sh. T. Banusekar, CA  
प्रत्यर्थी की ओर से/Respondent by : Smt. Ruby George, CIT

सुनवाई की तारीख/Date of Hearing : 10.04.2018  
घोषणा की तारीख/Date of Pronouncement : 17.05.2018

### **आदेश /O R D E R**

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

All the appeals of the independent assesseees are directed against the respective orders of the Commissioner of Income Tax, Central-II, Chennai, dated 14.11.2014, revising the order of the Assessing Officer dropping the penalty proceeding initiated under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). Since common issue arises for consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

2. All the assesseees filed their respective appeals belatedly. There was a delay of 570 days in filing the appeals by the assesseees in I.T.A. Nos.2450 to 2452/Chny/2016 and in the case of other assesseees, there was a delay of 565 days. The assesseees have filed petitions for condonation of delay. We have heard the Ld. representative for the assesseees and the Ld. D.R. We find that

there was sufficient cause for not filing the appeals before the stipulated time. Therefore, we condone the delay and admit the appeals.

3. Sh. T. Banusekar, the Ld. representative for the assessees, submitted that there was a search operation in the case of AMN Jewellers Pvt. Ltd. According to the Ld. representative, it was found by the Revenue authorities that the assessees sold jewellery to M/s AMN Jewellers Pvt. Ltd. during the year under consideration. The assessees could not furnish source for the acquisition of jewellery. According to the Ld. representative, the explanation of the assessees that these were received by them during the course of their marriage from the respective parents and relatives, was rejected by the Assessing Officer and the assessments were completed accordingly. The Assessing Officer initiated penalty proceeding under Section 271(1)(c) of the Act.

4. The Ld. representative for the assessee further submitted that the assessees explained before the Assessing Officer during the penalty proceeding that the gold jewellery sold to M/s AMN Jewellers Pvt. Ltd. was acquired by way of gifts from relatives and

parents during the marriage and other functions over the year. The assessee also filed revised return before initiating penalty proceeding disclosing all the jewellery and offered the same for taxation. According to the Ld. representative, the revised returns filed by all the assesseees were accepted by the Assessing Officer and no addition was made. In those circumstances, the Assessing Officer, after considering the decision of Indore Bench of this Tribunal in Shri Radhey Shyam Sarda and Others v. ACIT 2012 (12 TMI 320) and the judgment of Apex Court in CIT v. Suresh Chandra Mittal (2001) 251 ITR 9, found that this is not a fit case for levy of penalty. Accordingly, he dropped the penalty proceeding.

5. The Ld. representative for the assessee further submitted that the Administrative Commissioner in the guise of exercising his revisional jurisdiction under Section 263 of the Act, found that dropping the penalty proceeding initiated by the Assessing Officer is erroneous and prejudicial to the interests of Revenue. The Ld. representative further submitted that an authority under the Income-tax Act, who initiates penalty proceeding, is not obliged to levy penalty when he is satisfied with the explanation of the assessee in the course of penalty proceeding. Referring to Section 271(1)(c) of



the Act, the Ld. representative submitted that the Assessing Officer may levy penalty for concealment of any part of income or furnishing inaccurate particulars of such income. In this case, the assessee admitted their entire income in the revised return and therefore, there is no question of any concealment or furnishing inaccurate particulars. Moreover, according to the Ld. representative, when the Assessing Officer accepted the explanation offered by the assessee and found that it is not a case for levy of penalty, the Administrative Commissioner cannot substitute his view to that of the Assessing Officer. When the Assessing Officer, by placing reliance on the judgment of Apex Court in Suresh Chandra Mittal (supra), took one of the possible views, the same cannot be considered to be erroneous and prejudicial to the interests of Revenue. Referring to the judgment of Apex Court in CIT v. MAX India Ltd. (2007) 295 ITR 282, the Ld. representative submitted that when the Assessing Officer has taken one of the possible views on the basis of the judgment of Apex Court, the Administrative Commissioner cannot substitute his view by holding that the dropping the penalty proceeding is erroneous and prejudicial to the interests of Revenue.

6. Sh. T. Banusekar, the Ld. representative for the assesseees, further submitted that except in the case of Smt. H. Pradeepa in I.T.A. No.2392/Chny/2016 and Shri V. Ramesh in I.T.A. No.2398/Chny/2016, in all other cases, the order of assessment is time barred, therefore, there cannot be any penalty proceeding. According to the Ld. representative, even the assessment order passed by the Assessing Officer on 31.03.2014 in all the cases except in the case of Smt. H. Pradeepa and Shri V. Ramesh, cannot stand in the eye of law. However, according to the Ld. representative, since the assesseees filed the revised return and admitted the income by voluntarily offering the same for taxation, the Assessing Officer may be justified in admitting the revised return. That does not mean, according to the Ld. representative, that the Assessing Officer can initiate penalty proceeding on the basis of the assessment order which was passed after expiry of limitation. According to the Ld. representative, the assessment order cannot stand in the eye of law, therefore, there cannot be any levy of penalty under Section 271(1)(c) of the Act.

7. On the contrary, Smt. Ruby George, the Ld. Departmental Representative, submitted that the assessee filed revised return after the search, therefore, it cannot be considered to be a voluntary one. According to the Ld. D.R., excess jewellery was found in the search proceeding and it was contended before the Assessing Officer that the jewellery belonging to these assessee were given to M/s AMN Jewellers Pvt. Ltd. The source for acquisition of jewellery by these assessee are gifts received during the course of marriage and other occasions from the parents, relatives and friends. However, according to the Ld. D.R., they could not substantiate the claim before the Assessing Officer. Since the assessee have offered the cost of jewellery as income for taxation, according to the Ld. D.R., the Assessing Officer found that there was concealment of income, hence, he initiated penalty proceeding by issuing show cause notice. In the course of penalty proceeding, according to the Ld. D.R., on the basis of the judgment of Apex Court in Suresh Chandra Mittal (supra), the Assessing Officer found that it is not a fit case for initiating any penalty. According to the Ld. D.R., when there was difference of income reported and assessed,

there was presumption of concealment of income, therefore, the Assessing Officer is not justified in dropping the penalty proceeding.

8. The Ld. Departmental Representative further submitted that the assessee claim that they offered the income voluntarily in order to avoid litigation and buy peace, etc. According to the Ld. D.R., the Income-tax Act does not recognize this kind of defences. Voluntary disclosure does not discharge the assessee from the mischief of penalty proceeding. The Assessing Officer has dropped the proceeding without any application of mind. Therefore, according to the Ld. D.R., the Administrative Commissioner, being a revisional authority, set aside the order of the Assessing Officer dropping the penalty proceeding and directed him to pass an order afresh after considering all the material available on record. Therefore, according to the Ld. D.R., the Administrative Commissioner has rightly exercised his power.

9. We have considered the rival submissions on either side and perused the relevant material available on record. The penalty proceeding initiated by the Assessing Officer under Section 271(1)(c) of the Act was dropped on the ground that the assessee

offered the income voluntarily by way of filing revised return and the Assessing Officer accepted the same. The Assessing Officer placed his reliance on the judgment of Apex Court in Suresh Chandra Mittal (supra). The Administrative Commissioner in exercising of his power under Section 263 of the Act, held that voluntary offer of income by way of revised return does not absolve the assessee from the mischief of penalty consequences as provided under the Income-tax Act.

10. We have carefully gone through the proviso to Section 271(1)(c) of the Act which reads as follows:-

**S.271. Failure to furnish returns, comply with notices, concealment of income, etc.** - (1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—

(b) .....

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or

he may direct that such person shall pay by way of penalty,--

(ii) in the cases referred to in clause (b), in addition to tax, if any, payable by him, a sum of ten thousand rupees for each such failure ;

(iii) in the cases referred to in clause (c) or clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than,

but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits.

11. From the above, it is obvious that if the Assessing Officer or the Commissioner, in the course of any proceeding under the provisions of Income-tax Act, is satisfied that any person concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct such person shall pay penalty. Therefore, discretion was vested on the Assessing Officer to levy penalty in case the Assessing Officer is satisfied that there was concealment of income or the assessee has furnished inaccurate particulars of his income. In the case before us, the assessee after the search proceeding in the case of AMN Jewellers Pvt. Ltd., filed their revised return and offered the value of the jewellery as income and paid the taxes. The Assessing Officer accepted the return filed by the assessee without any alteration or addition.

12. The question arises for consideration is when the assessee filed the revised return after the search operation in the case of AMN Jewellers Pvt. Ltd. and offered the value of the jewellery for taxation, whether penalty proceeding can be initiated against the

assesseees? This Tribunal is of the considered opinion that when the assesseees offered the income voluntarily and offered the same for taxation and the source of acquisition of such jewellery was also explained before the Assessing Officer as the gifts from relatives, friends and parents, which are accepted, there is no need to proceed further with penalty proceeding. As rightly submitted by the Ld. representative for the assesseees, the Assessing Officer placed his reliance on the judgment of Apex Court in Suresh Chandra Mittal (supra).

13. In the case of Suresh Chandra Mittal (supra), the assessee originally filed return showing meagre income. After the search operation, a notice under Section 148 of the Act was served and by way of revised return, higher income was offered for taxation. The Assessing Officer regularized the revised return and accepted the income offered in the revised return. The Assessing Officer levied penalty which was also confirmed by the CIT(Appeals). But, this Tribunal found that the Department had not discharged any burden of proving concealment and simply rested its conclusion on the act of voluntary surrender done in good faith, therefore, the penalty cannot be levied. On a reference to the High Court, it was found

that no penalty can be levied for concealment. This judgment of the High Court is reported in (2000) 241 ITR 124 and on further appeal before the Apex Court, the Apex Court dismissed the appeal. In this case, since the Assessing Officer has followed the judgment of Apex Court in Suresh Chandra Mittal (supra), it cannot be said that the view taken by the Assessing Officer is erroneous and prejudicial to the interests of Revenue. This Tribunal is of the considered opinion that the view taken by the Assessing Officer for dropping the penalty proceeding initiated under Section 271(1)(c) of the Act is one of the possible views supported by the judgment of Apex Court in Suresh Chandra Mittal (supra). Therefore, it is not justified for the Administrative Commissioner to substitute his view by setting aside the order of the Assessing Officer dropping the penalty proceeding initiated. Therefore, we are unable to uphold the orders of the Commissioner. Accordingly the orders of the Administrative Commissioner passed under Section 263 of the Act are set aside and that of the Assessing Officer dropping the penalty proceeding are restored.

14. In the result, all the appeals filed by the assessee stand allowed.



Order pronounced on 17<sup>th</sup> May, 2018 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 17<sup>th</sup> May, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Central-II, Chennai-34
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.