

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUDHAKAR**
and
THE HONOURABLE MR.JUSTICE **R.KARUPPIAH**

Tax Case (Appeal) No.602 of 2007

R.Padmanabhan .. Appellant

versus

The Deputy Commissioner of Income Tax
Circle I (1), Salem.

.. Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 as against the order dated 29.06.2005 made in I..T.A..No.1467/mds/1999 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench for the assessment year 1995-96.

For appellant : Mr.C.V.Rajan
for M/s.Subbaraya Aiyar Padmanabhan

For respondent : Mr.J.Narayananasamy
Standing Counsel for Income Tax.

J U D G M E N T

(Judgment of the Court was delivered by **R.SUDHAKAR,J.**)

This Tax Case (Appeal), filed by the assessee as against the order of the Income Tax Appellate Tribunal, was admitted by this Court on the following substantial question of law:

“Whether the Appellate Tribunal was right in law in holding that the provisions of Clause B to Explanation 1 to Sec.271(1)(c) are attracted thereby reversing the order of first appellate authority cancelling the penalty?”

2. The brief facts are as follows:

The appellant/assessee is an individual carrying on business in cloth and readymade garments as a proprietary concern. The assessee filed his return of income for the assessment year 1995-96 declaring the income at Rs.3,61,060/-. On a perusal of the statements filed by the assessee, the Assessing Officer noticed that the assessee received NRE gifts to the extent of Rs.7.25 lakhs from various parties. Since the assessee is not able to prove the genuineness of the NRE gifts received to the satisfaction of the Department, proceedings were initiated under Section 147 of the Income Tax Act by issuing notice under Section 148 of the Income Tax Act. In response to the said notice, the assessee filed the return of income admitting the same income as was filed originally. Subsequently, he filed revised income showing a total income of Rs.10,86,060/-, which includes NRE gift received by the assessee. The assessee also furnished the details of the persons from whom he received the said NRE gifts. Since the assessee concealed the income in the original return filed, the

Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Income Tax Act by issuing notice to the assessee. In response to the said notice, the assessee, in order to buy peace, offered the whole amount of gift as income. Since the assessee is not able to prove the genuineness of the NRE gifts, the assessee agreed to offer the said amount as income for the assessment year 1995-96. Hence the Assessing Officer completed the assessment under Section 143(3) read with Section 147 of the Income Tax Act accepting the income disclosed in the return filed subsequently and levied penalty under Section 271(1)(c) of the Income Tax Act.

3. Aggrieved by the said penalty proceedings, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who allowed the appeal, thereby cancelled the penalty proceedings, holding that the Assessing Officer, because of the surrender made by the assessee in the course of survey, did not consider it necessary to make further enquiry to establish that the gifts claimed were not genuine or false to establish the fact that the assessee had actually concealed facts/or particulars of its income or that it had furnished inaccurate particulars of its income.

4. As against the said order of the Commissioner of Income Tax (Appeals), the Revenue preferred an appeal before the Income Tax Appellate Tribunal.

5. The Tribunal, following the decision in the case of ***K.P.Madhusudhanan V. CIT*** reported in ***(2001) 251 ITR 99***, allowed the appeal filed by the Revenue restoring the penalty proceedings initiated by the Assessing Officer holding that when the assessee had admitted the income only after being questioned during the course of survey, the onus is on the assessee to establish that the assessee had not concealed any income.

6. Aggrieved by the said order of the Tribunal, the assessee is before this Court raising the above-mentioned substantial question of law.

7. Learned counsel appearing for the assessee pointed out that when the assessee had voluntarily offered the income, in the absence of any wilfulness in not disclosing the same, the question of levy of penalty did not arise. He pointed out that there was no concealment as such, as had been viewed by the Assessing Authority and as

confirmed by the Tribunal.

8. Heard learned counsel appearing for the assessee and the learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.

9. It is seen from the order of the Assessing Officer that after the survey being conducted in the premises of the assessee, the assessee offered the NRE gift as income and filed revised return. Hence, the Assessing Officer initiated penalty proceedings. A perusal of the order of the Tribunal reveals that the assessee himself had admitted that it would be very difficult and tough task for him to prove the genuineness of the gifts. The assessee had agreed to offer the said NRE gifts as income only after survey being conducted in the premises of the assessee. But for the survey, the assessee would not have offered the said NRE gifts as income. Hence, the onus is on the assessee to substantiate the said NRE gifts. When the assessee is not able to prove the genuineness of the NRE gifts, the Tribunal is justified in confirming the order of the Assessing Officer.

10. This Court had an occasion to consider the issue on the levy of penalty in the decisions reported in **283 ITR 254 (M.S.Mohammed Marzook (Late) and another V. Income Tax Officer); 292 ITR 585 (M.Shahul Hameed Batcha V. Income Tax Officer) and 283 ITR 230 (M.Sajjanraj Nahar V. Commissioner of Income Tax)**, wherein, this Court had elaborately considered the case law on the subject and pointed out to the decision of the Supreme Court in the case of **K.P.Madhusudhanan V. CIT** reported in **(2001) 251 ITR 99**, rendered after the introduction of Explanation to Section 271(1)(c) of the Income Tax Act. This Court held that when the concealment of the income was with reference to the original return and there was no explanation at all as regards the non-disclosure, the mere claim that the income was offered in the revised return, as a matter of purchasing peace, by itself, would not exonerate the assessee from the culpability. Having regard to the fact that the assessee had not disclosed any reason for the omission in the original return and that the revised return was filed only after the search, this Court held that penalty was leviable.

11. The facts herein are no different from the above said decisions. As seen from the narration in the order of the Tribunal as

well as that of the other authorities, the assessee filed the revised return only after survey operation in the business premises of the assessee. The conduct of the assessee, hence, assumes significance in coming forward to disclose the income. When there is no satisfactory explanation as regards its non-disclosure of the income in the original return and that the undisclosed income came to be shown only in the revised return, rightly the Tribunal applied the law as declared by the Apex Court and by this Court.

12. In the circumstances, we do not find any justification to cancel the penalty levied by the Assessing Officer, which is admittedly a minimum penalty. Accordingly, the appeal fail and the same is dismissed. No costs.

Index: Yes / No
Internet: Yes / No

(R.S.,J.) (R.K.,J.)
19.01.2015

sl

To

1. The Income Tax Appellate Tribunal, Madras 'D' Bench.
2. The Commissioner of Income Tax (Appeals)-VII, Chennai
3. The Deputy Commissioner of Income Tax Circle I (1), Salem.

R.SUDHAKAR,J.
AND
R.KARUPPIAH,J.

sl

Tax Case (Appeal) No.602 of 2007

19.01.2015