IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 8/6/2016

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice D.Krishnakumar

Tax Case Appeal No.357 of 2016

Commissioner of Income Tax IV
No.121 Nungambakkam High Road
Chennai 600 034. ...Appellant/Appellant

Vs

Mr.Leander Fernandes Arnold
Flat 4 G Block L-Opera
VGN Nagar Phase I
Nolumbur
Mogappair West
Chennai 600 037. ... Respondent/Respondent

Prayer: Appeal filed under section 260A of Income Tax Act,1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 29/7/2015 in ITA No.2140/Mds/2014 against the Order of the Commissioner of Income tax(A)-II, 121, Mahatma Gandhi Road, Nungambakkam, Chennai 34 dated 18/3/2014 made in ITA.NO.1535/2013-14 dated 18/3/2014 and

against the penalty order passed by the Income Tax Officer, Company Ward II(1), Chennai dated 24/11/2011 made in GIR.NO./PAN AAAPF5324J.

For appellant : Mr.T.R.Senthil Kumar
Senior Standing Counsel
for Income Tax.

\- - - - - -

J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

This Appeal has been filed against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 29/7/2015.

2. The substantial questions of law raised in the instant appeal are:-

> "1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in cancelling the penalty levied under Section 271 (1) (c) on the Short Term Capital Gains not declared and paid by the assessee?
>
> 2. Whether on the facts and circumstances of the case, the Appellate Tribunal is correct in cancelling the penalty levied under Section 271 (1) (c) when the explanations offered by the assessee are not bona fide and deliberate failure on the part of the assessee to offer income?"

3. However, when the instant appeal came up for admission, inviting attention of this Court to a Circular No.21/2015 [F.No.279/Misc.142/2007-ITJ (PT.)], dated 10/12/2015, Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for Income Tax Department submitted that penalty imposed is Rs.11,15,112/-, under Section 271 (1) (c) of the Income Tax Act and the ceiling limit is covered by paragraph No.4 of the above said Circular.

4. We have perused the above said circular.

5. Placing on record the submission of the learned Senior Standing Counsel for Income Tax, the instant appeal is dismissed, leaving the substantial questions of law open.

-s/d-
Assistant Registrar(CSIV)

True Copy

Sub-Assistant Registrar

mvs

To

1.The Income Tax Appellate Tribunal
Madras A bench Chennai

2.The Commissioner of Income-Tax(A)-II
121, Mahatma Gandhi Road,
Nungambakkam, Chennai-34

3.The Income Tax Officer,
Company ward-II(1)
Chennai

+1 cc to Mr.T.R.Senthil Kumar Advocate sr.30737

Tax Case Appeal No.357 of 2016

ev(co)
aa23/06/2016