

In the High Court of Judicature at Madras

Orders Reserved On 18.08.2020	Orders Pronounced On 25.08.2020
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Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.266 of 2018
and C.M.P.Nos.4876 & 4877 of 2018

M/s.Gangotri Textiles Ltd.,
35, Robertson Road,
RS Puram, Coimbatore.
PAN: AAACG8018M

...Appellant

Vs

The Deputy Commissioner of Income Tax,
Corporate Circle 2,
Coimbatore.

...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 26.05.2017 in ITA No.3413/Mds/2016 on the file of the Income Tax Appellate Tribunal Chennai 'A' Bench for the assessment year 2012-13.

Against the order dated 28/09/2016 made in Appeal No.148/15-16, on the file of the Commissioner of Income Tax (Appeal)-I, Coimbatore for the assessment year 2012-13.

against the order dated 12/03/2015 and 25/09/2015 made in PAN NO.AAACG8018M on the file of the Deputy Commissioner of Income Tax Corporate Circle-2, Coimbatore respectively for the assessment year 2012-13

For Appellant : M/s.S.Yogalakshmi

For Respondent : Mr.T.R.Senthil Kumar
M/s.K.G.Usha Rani
Standing Counsel

JUDGMENT

Judgment was delivered by T.S.SIVAGNANAM, J

This appeal by the assessee filed under Section 260A of the Income Tax Act, 1961 ("the Act" for brevity), is directed against the order dated 26.05.2017 passed by the Income Tax Appellate Tribunal, Chennai 'A' Bench (for brevity, the Tribunal) in ITA No.3413/Mds/2016 for the assessment year 2012-13.

3.The appeal is entertained on the following substantial questions of law:

"1.Whether the penalty imposed u/s. 271(1) (c) of the Act for the Assessment Year 2012-13 is sustainable in law despite the invalid initiation of the said proceedings on the issuance of the show cause notice dated 12.03.2015?

2.Whether the penalty imposed u/s. 271(1) (c) of the Act for the Assessment Year 2012-13 is sustainable in law despite the complete disclosure of the sale of windmills and vacant lands in the financial statements which formed part of the annual report and return of income?

3.Whether the penalty under consideration is sustainable on the debatable issue on the reporting of capital gains pertaining to the sale of windmills and vacant lands?

3.We have elaborately heard M/s.S.Yogalakshmi, learned counsel for the appellant/assessee and M/s.K.G.Usha Rani, learned Standing Counsel appearing for the respondent/revenue.

4.The assessment for the year under consideration, AY 2012-13 was completed under Section 143(3) of the Act by order dated 12.03.2015. During the course of the scrutiny assessment, the Assessing Officer noticed that the assessee had sold two landed properties at Kalapatti and Dharapuram and the capital gain was worked out for both the properties at Rs.1,37,31,142/-. However this was not admitted by the assessee in the return of income. Further, the Assessing Officer found that the sale of windmill amounting to Rs.21,60,00,000/- was not admitted by the assessee in the return of income filed and the short term capital gain arising on the sale of windmill was Rs.21,59,90,469/- after reducing the opening WDV of Rs.9,531/-. The Assessing Officer called upon the assessee to explain this aspect and in the course of assessment, the assessee admitted to have omitted the sale of land and windmill and filed a letter dated 03.03.2015

along with a computation of Long Term Capital Gain [LTCG] on the sale of lands and the Short Term Capital Gain [STCG] on the sale of windmill. Taking note of the admission made by the assessee, the LTCG and the STCG were added to the total income of the assessee and accordingly assessment was completed. The assessment order stated that the penalty proceedings under Section 271(1)(c) is initiated separately. A notice under Section 274 r/w. 271(1)(c) of the Act dated 12.03.2015 was issued to the assessee to show cause as to why an order imposing penalty should not be made under Section 271 of the Act. Personal hearing was offered to the assessee. The assessee availed the opportunity and filed their written submissions dated 08.04.2015 inter alia stating that they would be put to great hardship if penalty is imposed, that they had disclosed particulars of all income voluntarily and that there was no concealment of any income or furnishing of inaccurate particulars of income and therefore, there was no question of concealment of income under Section 271(1)(c) of the Act and the question of levy of penalty would not arise. They relied upon the decision of this Court in CIT vs. K.R.Chinni Krishna Chetty [246 ITR 121 (Madras)] and the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. vs. State of Orissa [83 ITR 26(SC)]. By notice dated 31.07.2015 the assessee was called upon to appear before the Assessing Officer on 11.08.2015 and on receipt of the notice, the assessee sent a representation dated 31.07.2015 requesting for dropping the penalty proceedings, wherein they stated that at the time of assessment, they found out the omission with regard to the LTCG and the STCG and voluntarily offered the capital gains, that they acted bonafidely and that the omission to mention the same in the return of income was an inadvertent bonafide mistake. The Assessing Officer after considering the submissions made and the decisions relied on, by order dated 25.09.2015 levied minimum penalty of 100%.

5. Aggrieved by such order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Apart from reiterating the stand regarding the bonafide inadvertent mistake, the assessee submitted that the entire Unit of the assessee has been sold by the bankers, that the assessee did not even have an office space to function, that the assessee had disclosed the relevant details regarding the sale of the lands and windmill in their annual report, which was published and that there was no concealment to the said effect. The CIT(A) rejected the stand taken by the assessee and held that there was concealment of income and penalty was leviable and accordingly confirmed the order of the Assessing Officer. Aggrieved over such order, the assessee preferred an appeal before the Tribunal reiterating the stand that there was no willful concealment of particulars and prayed for deleting the penalty. The Tribunal

took note of the submissions, more particularly, the submission that it was an inadvertent mistake and rejected the same, after noting the conduct of the assessee and accordingly confirmed the order passed by the CIT(A) and dismissed the appeal.

6.M/s.S.Yogalakshmi, learned counsel for the appellant strenuously contended that the notice dated 12.03.2015 issued under Section 274 r/w. 271(1)(c) of the Act is defective and it is an outcome of non-application of mind and therefore, the notice is non-est in law. Consequently, all proceedings culminating in the order of the Tribunal have to be declared as non-est. Secondly, it was submitted that the assessee acted with bonafide that there was no malafide intention on the part of the assessee, that the assessee incurred huge loss, that there was no positive income as the banks have sold the property and that on re-working of the capital gains, the loss got reduced from RS.33 Crores to Rs.11 Crores which was a paper loss. It is further submitted that the imposition of penalty under Section 271(1) of the Act is not automatic and the Assessing Officer has to give reasons as to why penalty should be imposed and though mens rea may not apply yet the bonafide of the assessee are required to be considered which was not done by the Assessing Officer. Further, it is submitted that the Assessing Officer held that the assessee furnished inaccurate particulars. On appeal, the CIT(A) held that the assessee concealed its income and it was totally on a different ground, on which, the order of CIT(A) was affirmed by the Tribunal. This also shows the non-application of mind. It is further reiterated that the Assessing Officer has to record reasons and that the penalty order dated 25.09.2015 is devoid of reasons and hence liable to be set aside. In support of her contentions the learned counsel referred to the following decisions which are enumerated below under five sub headings which are as follows:

I - Sec 271 (1) (C) of IT Act penalty set-aside based on Bonafide conduct of assessee / inadvertence:

1. CIT vs. Pricewaterhouse Coopers Pvt. Ltd. [2012-ITRVSC-244]
2. T. Ashok Pai vs. CIT [(2007) 161 Taxmann 340 (SC)]
3. Hindustan Steel v. State of Orissa [(1992) 83 ITR 26]
4. CIT vs. Societex [2012-ITRV-HC-DEL-163]
5. CIT vs. Bennett Coleman & Co. Ltd [2013-ITRV-HC MUM-030]
6. CIT vs. Sania Mirza [2013-ITRV-HC-AP-002]
7. CIT vs. Balaji Distilleries Ltd. [(2003) 126 TAXMAN 264 (Mad.)]
8. CIT vs. S.D.Rice Mills [(2005) 275 ITR 206]

9. Jagannath Singh v. CWT [(1980) 122 ITR 114]
10. Acit Circle-4(1) Visakhapatnam V. Sri Ganta Srinivasa Rao Visakhapatnam. [2016 SCC ONLINE ITAT 1631]

II - Penalty set-aside for invoking two limbs of Section 271 (1) (c) of IT Act by AO:

1. CIT vs. SSA Emerald Meadows [(2016) 73 taxmann.com 248 (SC)].
2. CIT V. Manjunatha Cotton and Ginning Factory [(2012) SCC OnLine Kar 8862]
3. CIT vs. SSA Emerald Meadows" [in ITA No. 380/2015 (Kar)]
4. Ventura Textiles Vs CIT [(2020) SCC Online Bom 709]
5. S Chandrasekar Vs ACIT [(2017) SCC Online Kar 853]
6. Gayathri Exports VS ACIT [ITA 640/2015 (Kar HC)]
7. SHRI S P PRASAD V. ACIT [(2018) - ITA 170/2010 (Kar HC)]
8. CIT v. Virgo Marketing (P) Ltd. [2008] 171 Taxman 156
9. CIT v. Manu Engg. [1980] 122 ITR 306
10. Pr. CIT vs. Smt. Baisetty Revathi - [2017] 398 ITR 88 (Andhra Pradesh HC)
11. Nayan C. Shah vs. Income Tax Officer ITA No.2822/ Ahd/2011
12. Muninaga Reddy vs. Assistant Commissioner of Income Tax ITA NOS. 251/2016 & 390/2016 (T-IT)
13. Safina Hotels Private Limited vs. CIT ITA No.240/2010

III - Sec 271 (1) (C) of IT Act - Concealment of income & Furnishing inaccurate particulars of income have different connotations:

1. Sri T.Ashok Pai vs. CIT [(2007) 292 ITR 11 (SC)]
2. Dilip N Shroff [291 ITR 519 (SC)]
3. CIT Vs Lakhdhir lalji [85 ITR 77(Guj),]
4. CIT Vs Raj Trading Co. [(1996) 217 ITR 208 (Raj.)]
5. CIT vs Samson Perinchery [(2017) 392 ITR 4 (Bom.)]

IV - Sec 271 (1) (C) of IT Act "Satisfaction" of the AO is essential while holding penalty:

1. Mak Data P. Ltd vs Commissioner Of Income Tax- (2013) - 358 ITR 593

2. D.M. Manasvi - 86 ITR 557 (SC)
3. CIT vs. SSA Emerrald Meadows - ITA No. 380/2015 (Kar)
4. PCIT vs M/S Deccan Mining Syndicate Pvt - 2018 I.T.A. No.501/2017 (Kar HC)
5. Madhushree Gupta Vs UOI - 317 ITR 143(Del)
6. Commissioner of Income Tax vs. Dee Control and Electric Pvt. Ltd (2017) 100 CCH 0185 AllHC
7. CIT vs. Jain Export Private Ltd - ITA No.235/2013
8. CIT vs. MWP Ltd - ITA No.332/2007
9. CIT vs. Rucha Engineers Pvt. Ltd - 2015-ITRV-HC-MUM-025
10. CIT vs. Dalmia Dyechem Industries - ITA No.1396/2013.

V - Question of Law can be raised at any stage:

K. LUBNA & ORS. VS BEEVI & ORS - (2020) CIVIL APPEAL NOS.2442-2443 OF 2011 - SC.

7. Per contra, M/s.K.G.Usharani, learned Standing Counsel for the respondent/revenue submitted that the first appellate authority and the Tribunal after examining the factual position concurrently held that the assessee is liable for payment of penalty and there is no substantial question of law arising for consideration in this appeal. The conduct of the assessee in concealing the income by not mentioning the sale of windmill and the lands will clearly establish the lack of bonafides on the part of the assessee. To demonstrate the conduct of the assessee, the learned standing counsel referred to the list of dates and pointed out that the conduct of the assessee will clearly show that the concealment was motivated and intended to benefit the assessee. Further it is submitted that at no earlier point of time, the assessee challenged the validity of the notice dated 12.03.2015 and the assessee is precluded from raising such a contention before this Court for the first time. Further it is submitted that the defect in the notice issued at the first instance, which was never canvassed by the assessee at any point of time and now canvassing for the first time before this Court cannot be a substantial question of law. The learned Standing Counsel referred to the return of income filed on 26.09.2012 and pointed out that under the head 'capital gains', the assessee has shown 'Nil' in all the columns. That apart, the assessee never filed a revised return and for the first time, the assessee admitted to do so on 1st March 2017 when the matter was before the Tribunal. This will clearly establish that the conduct of the assessee is not bonafide. Further it is submitted that the penalty proceedings cannot be set aside merely on the ground that the return of income and the assessed

income was a loss. In this regard, placed reliance on the decision of the Hon'ble supreme Court in CIT vs. Shree Chowatia Tubes (India) (P) Ltd. [(2017) 80 Taxmann.com 388]. Further, it is submitted that the non-disclosure of the capital gains came to light based on the annual information report and that is how the Assessing Officer came to know that the sale of the land and windmill were not admitted by the assessee in the return of income, which led to issuance of notice under Section 143(2) of the Act. The assessee never declared anywhere in the return of income about the sale of the lands and windmill and the copy of the annual report was not placed before the Assessing Officer or before the CIT(A). The learned standing counsel placed reliance on the decisions in the case of N.G.Technologies (In Liquidation) vs. Commissioner of Income Tax [(2016) 70 Taxmann.com 37 (SC)], Kuldeep Wines vs. Commissioner of Income Tax [(2014) 52 Taxmann.com 248(SC)], Jivanlal and Sons vs. Assistant Commissioner of Income Tax [(2019) 103 Taxmann.com 208 (SC)], Hamirpur District Cooperative Bank Ltd. vs. Commissioner of Income Tax, Kanpur [(2020) 113 taxmann.com 447 (SC)], Sundaram Finance Ltd. vs. Deputy Commissioner of Income Tax [(2018) 99 taxmann.com 152 (SC)] and [(2018) 93 taxmann.com 250 (Madras)] and Chemmancherry Estates Co. vs. Income Tax Officer, Ward-VIII(2) [(2019) 111 taxmann.com 66 (Madras)].

8. After elaborately hearing the learned counsels on either side and carefully perusing the materials placed before this Court including the decisions relied on by the learned counsels on either side, the first issue to be considered is whether the notice dated 12.03.2015 issued under Section 274 r/w. 271(1)(c) of the Act is defective. The argument of M/s.S.Yogalakshmi, learned counsel for the appellant is that the notice stated that it appears to the Assessing Officer that the assessee concealed the particulars of income or furnished inaccurate particulars of income. It is the argument that the word 'or' has been used and not 'and'. The Assessing Officer did not apply his mind while issuing the notice to state as to whether he was of the prima facie view that the assessee concealed the particulars of income or furnished inaccurate particulars of income. Therefore it is the submission that this defect is inherent, which goes to the root of the matter and all consequential proceedings would have to be rendered as nonest. Among the decisions, which were relied on by M/s.S.Yogalakshmi, learned counsel for the appellant, emphasis was laid on the decision in Manjunatha Cotton and Ginning Factory. This decision is pressed into service to substantiate her contention that if the notice does not specify as to which limb of Section 271(1)(c) is attracted, the penalty proceedings are vitiated. Unfortunately, no such contention was advanced by the assessee at any earlier point of time and for the first time before this Court such a contention is advanced. The submission of the learned counsel is that

this, being the question of law, can be raised. We do not agree with the submission for more than one reason. Firstly a defect in the notice, if according to the assessee would result in a jurisdictional error, is not merely a pure question of law, but a mixed question of fact and law. If such is the position, the vigilant assessee, more particularly, a listed Company like the assessee before us should point out the factual issue at the very first instance. If that was not done by the assessee, then it goes to show that the assessee was not prejudiced by the use of the expression 'or'.

9. This very question was considered in the case of Sundaram Finance Ltd., wherein an identical submission was made by the assessee by placing reliance on Manjunatha Cotton and Ginning Factory. The Court taking note of the fact that the authorities concurrently rejected the explanation offered by the assessee and refused to interfere with the factual finding. In paragraph 16 of the judgment, the argument regarding the defective notice was considered and answered against the assessee which is quoted herein below:

16. We have perused the notices and we find that the relevant columns have been marked, more particularly, when the case against the assessee is that they have concealed particulars of income and furnished inaccurate particulars of income. Therefore, the contention raised by the assessee is liable to be rejected on facts. That apart, this issue can never be a question of law in the assessee's case, as it is purely a question of fact. Apart from that, the assessee had at no earlier point of time raised the plea that on account of a defect in the notice, they were put to prejudice. All violations will not result in nullifying the orders passed by statutory authorities. If the case of the assessee is that they have been put to prejudice and principles of natural justice were violated on account of not being able to submit an effective reply, it would be a different matter. This was never the plea of the assessee either before the Assessing Officer or before the first Appellate Authority or before the Tribunal or before this Court when the Tax Case Appeals were filed and it was only after 10 years, when the appeals were listed for final hearing, this issue is sought to be raised. Thus on facts, we could safely conclude that even assuming that there was defect in the notice, it had caused no prejudice to the assessee and the assessee clearly understood what was the purport and import of notice issued under Section 274 r/w, Section 271 of

the Act. Therefore, principles of natural justice cannot be read in abstract and the assessee, being a limited company, having wide network in various financial services, should definitely be precluded from raising such a plea at this belated stage.

10.The SLP filed by the assessee against the above decision was dismissed, [(2018) 99 taxmann.com 152 (SC)]. Further, we find that in the reply given by the assessee on 08.04.2015, the assessee would state that there is no concealment any income or furnishing any inaccurate particulars. Therefore, the assessee understood the notice to be a notice for concealment of any income or furnishing any inaccurate particulars and therefore the assessee cannot be permitted to raise a contention before this Court for the first time alleging defect in the notice. Thus, in the considered view of this Court, the assessee is precluded from raising any such contention regarding the validity of the notice.

11.M/s.S.Yogalakshmi, learned counsel for the appellant strenuously contended that the assessee acted bonafidely, voluntarily disclosed the details, that there was no intention to suppress the material, that the sale of lands and windmill were disclosed in the annual report and that without considering this aspect, the Assessing Officer has levied penalty.

12.Among the decisions relied on, emphasis was laid on the decision in the case of CIT vs. Pricewaterhouse Coopers Pvt. Ltd. To answer this issue, it would be first necessary to examine the factual position and to assess the conduct of the assessee, which is being projected as being absolutely bonafide. The return of income was filed by the assessee on 26.09.2012. A notice under Section 143(2) was issued on 13.08.2013 for which there was no response and the Assessing Officer issued notice Section 142(1) dated 09.09.2014 calling for details. The assessee submitted their reply dated 22.09.2014 in which, admittedly no information was disclosed about the sale the lands and windmill. On 03.03.2015, a letter was filed by the assessee, which is in response to the notice under Section 143 (2), in which, the assessee states that due to oversight, they had not offered the capital gains in their return and attached a summary of total income adjusting profit on the LTCG and the STCG. To be noted, the assessee did not file a revised return. The assessment was completed under Section 143(3). In response to the penalty notice dated 12.03.2015, the assessee stated that there is no concealment of income or furnishing of any inaccurate particulars and therefore, Section 271(1)(c) will not stand attracted. Further opportunity was given to the assessee and submissions were made, after which, the Assessing Officer considered and levied penalty which order has been affirmed by

the CIT(A) and the Tribunal. From the above dates and events, it is seen that the assessee took 19 months to respond to the notice dated 13.08.2013 issued under Section 143(2) and for the first time stated that due to oversight the sale of the lands and windmill have not been offered under the capital gains. It is not in dispute that the assessee did not disclose about the sale of the lands and windmill in the return of income. This is clear from the perusal of the return of income and in the relevant column, it is stated as 'Nil'. The assessee relies upon the annual report and substantial portion of the report was read to us by the learned counsel to impress upon us that the assessee's non-disclosure was bonafide and an inadvertent mistake. Firstly, this annual report is not a report, which is filed under the Income Tax Act. Furthermore, on facts, it is admitted that this annual report was never filed with the Income Tax Department. That apart, the Chartered Accountant has reported the capital gains as Nil and this has been signed by the Managing Director of the Company. If such is the factual position, it will not only be a case of filing inaccurate particulars, but also a case of concealment of income. The information came to the Department through the AIR, which was forwarded by the Registration Department and after verifying the same, when notice was issued under Section 143(2), the assessee, for the first time stated that due to inadvertence, they did not disclose the particulars relating to the capital gains. The above facts will clearly show that the assessee did not act bonafidely and the belated explanation sought to be offered deserves to be rejected.

13. One more attempt made by the assessee was 24 months after the assessment were completed by attempting to file a revised statement of income on 01.03.2017. This statement can never improve the case of the assessee nor exonerate them from penalty. Another contention advanced by M/s.S.Yogalakshmi is that the Assessing Officer had not recorded his satisfaction that penalty proceedings have to be initiated, by relying to the decision in the case of D.M.Manasvi to support the argument that the entire circumstances should have been considered, more particularly, the financial distress to which the assessee was thrown.

14. We have carefully perused the penalty order dated 25.09.2015 and we find that the Assessing Officer considered all the factual aspects raised by the assessee and rejected the same to be absolutely without bonafides. The decisions relied on by the assessee were also taken note of and each of the decisions was dealt with. The Assessing Officer placed reliance on the decision of the Hon'ble Supreme Court in Mak Data P. Ltd vs. CIT-II [(2018) 38 taxmann.com 448 (SC)] and stated that voluntary disclosure does not release the assessee from mischief

of penalty proceedings under Section 271(1)(c) of the Act. Therefore, we find that the penalty order is a reasoned order.

15. The learned counsel had argued that the defect in the penalty notice is a question of law which can be raised by the assessee at any point of time. We have considered this submission and we have rejected it. The learned counsel relied on the decision of the Hon'ble Supreme Court in the case of K.Lubna to submit that if the factual foundation for a case has been laid and the legal consequences of the same having been examined, the examination of such legal consequences would be a pure question of law. We have noted the factual position. The assessee understood the notice to be under both heads, namely, furnishing of inaccurate particulars and concealment of income. This is evident from the assessee's reply dated 08.04.2015 to the show cause notice dated 12.03.2015. Therefore, the decision in the case of K.Lubna does not help the assessee, as there is no substantial question of law arising from such contention.

16. The learned counsel argued that the financial condition of the assessee Company was also a relevant factor to assess their bonafides. This contention cannot be accepted because the settled legal position is that penalty cannot be cancelled on the mere ground that return of income and assessed income was a loss. In the said decision, the Hon'ble Supreme Court had relied upon the decision in the case of Commissioner of Income Tax vs. Gold Coin Health Food Pvt. Ltd. [(2008) Vol. 304 ITR 308], wherein it was held that Explanation 4(a) to Section 271(1)(c)(iii) is intended to levy penalty not only in a case where after addition of concealed income, a loss returned, after assessment becomes positive income, but also in a case where addition of concealed income reduces the returned loss and finally the assessed income is also a loss or a minor figure. In this regard, it will be beneficial to refer to the decision in Union of India vs. Dharmendra Textile Processors [(2008) 306 ITR 277(SC)], which has been referred to and relied on in the case of N.G.Technologies Ltd.

17. As against the decision in the case of Jivanlal and Sons, a Special Leave Petition filed against the decision of the High Court which confirmed the penalty order passed by the Tribunal rejecting the assessee's explanation that it had claimed deduction on wrong advice given by the Chartered Accountant was dismissed. The operative portion of the judgment of the High Court of Bombay in [(2019) 103 taxmann.com 207(Bom)] is as follows:

2. We are unable to agree for more than one reason. The assessee is a Firm. It was throughout being advised and represented by a Chartered Accountant. The Tribunal rightly proceeded on the

basis that a Chartered Accountant is deemed to be aware of the law and its intricacies. Being a professional, he could not have committed a mistake as was attributed to him. The tax paid is undisputedly an inadmissible expenditure from the profits of the business. Hence this amount should have been statutorily added back. Further, from the computation of income, the assessee added back certain inadmissible expenditure. However, he excluded the amount of income tax paid to the extent of Rs.48,90,114/-. Thus, the addition was only partial and not full. Unless and until the legal provision then in force permitted exclusion of the amount of income tax already paid, the Chartered Accountant could not have done this. The Chartered Accountant cannot feign ignorance of Section 40(ii) of the Income Tax Act as he is well trained and well versed in law representing not only the assessee, but various other clients. As far as the assessee's malafide intention is concerned, the burden was entirely on the assessee to then show in terms of Explanation-I to the provision permitting imposition of penalty that such intention never existed when the above act was committed. For that, there was no material either in the form of evidence of the assessee or the affidavit of the Chartered Accountant. Hence the Commissioner was right, according to the Tribunal, in imposing this penalty. The attempt to blame the Chartered Accountant cannot result in the assessee's exoneration and claimed in absolute terms. In the circumstances, the penalty was rightly imposed.

18. Thus, for the above reasons, we find that the order passed by the Tribunal does not call for any interference and the Substantial Questions of law framed for consideration have to be answered against the assessee.

19. In the result, the tax case appeal is dismissed and the Substantial Questions of law are answered against the assessee. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Income Tax Appellate Tribunal, Madras 'A' Bench.
2. The Commissioner of Income Tax (Appeal)-I, Coimbatore.
3. The Deputy Commissioner of Income Tax Corporate Circle-2, Coimbatore.

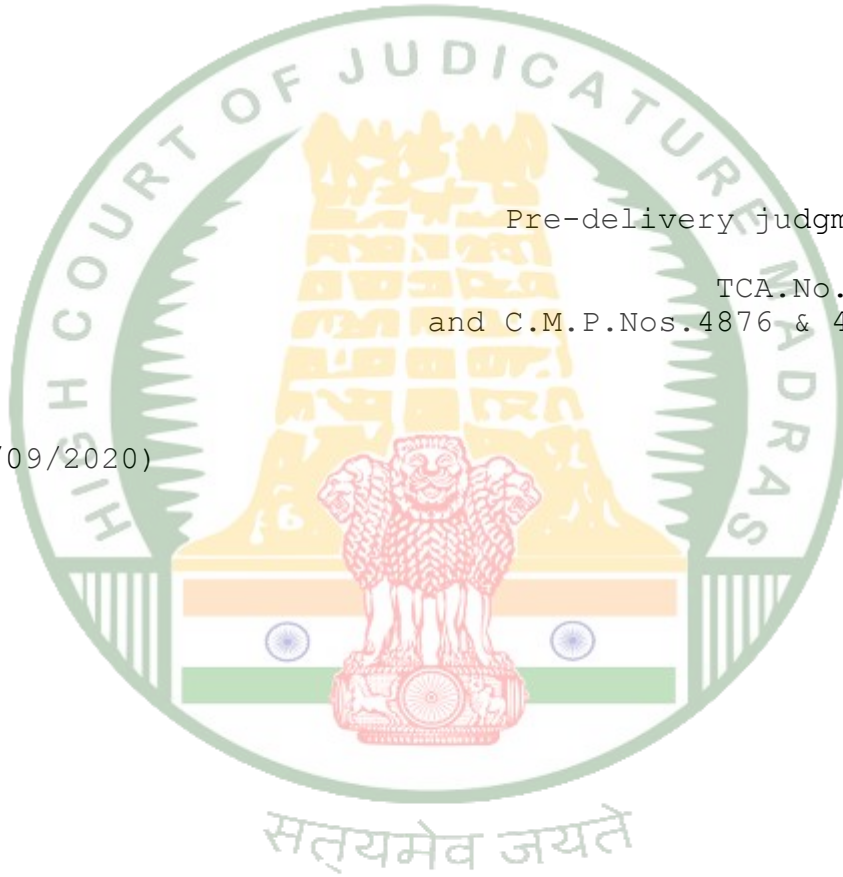
+lcc to M/s.Wallcliffs Law Firm, Sr.No.27547

+lcc to M/s.T.R.Senthilkumar, Advocate, Sr.No.27663

Pre-delivery judgment made in

TCA.No.266 of 2018
and C.M.P.Nos.4876 & 4877 of 2018

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