IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A.Nos. 205 to 210 of 2011

M/s Ramamurthy Metal Decorating Industries Private Ltd.,
Sivakasi.
.. Appellant in TCA.Nos.205, 207, 208 & 209 of 2011

Sri A.Ramamurthy
.. Appellant in TCA.Nos.206 & 210 of 2011

Versus

The Assistant Commissioner of Income Tax,
Virudhunagar. .. Respondent in all TCAs

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order dated 30.08.2005 passed by the Income Tax Appellate Tribunal, Chennai "C" Bench, in I.T.A.Nos. 1407, 1411, 1408, 1409, 1410 and 2132 /Mds/2003 Respectively.

Prayer in TCA 205 of 2011

Against the order dated 19.02.2003 of the commissioner of Income Tax (Appeals-II), Madurai in ITA Nos.207, 213, 214, 210, 215, 216/1999-2000 pertaining to Assesment Year 1979-80, against the order of the Assistant Commissioner of Income Tax, Circle-I, Virudhunagar, dated 22.09.1994 in PA.No.47-016-CX-5714.

Prayer in TCA 206 of 2011

Against the order dated 19.02.2003 of the commissioner of Income Tax (Appeals-II), Madurai in ITA Nos.204, 205, 206/1999-2000 pertaining to Assesment Year 1976-1977 against the order of the Assistant Commissioner of Income Tax, Circle-I, Virudhunagar, dated 15.09.1994 in PA.No.47-018-PZ-0193.

Prayer in TCA 207 of 2011

Against the order dated 19.02.2003 of the commissioner of Income Tax (Appeals-II), Madurai in ITA Nos.207, 213, 214, 210, 215, 216/1999-2000 pertaining to the Assesment Year 1978-1979 against the order of the Assistant Commissioner of Income Tax, Circle-I, Virudhunagar, dated 22.09.1994 in PA.No.47-016-CX-5714.

Prayer in TCA 208/2011 & TCA 209 of 2011

Against the order dated 19.02.2003 of the commissioner of Income Tax (Appeals-II), Madurai in ITA Nos.207, 213, 214, 210, 215, 216/1999-2000 pertaining to the Assesment Year 1976-1977 and 1975-1976 against the order of the Assistant Commissioner of Income Tax, Circle-I, Virudhunagar, dated 22.09.1994 in PA.No.47-016-CX-5714.

Prayer in TCA 210 of 2011

Against the order dated 19.02.2003 of the commissioner of Income Tax (Appeals-II), Madurai in ITA Nos.204, 205, 206/1999-2000 pertaining to the Assesment Year 1979-80 against the order of the Assistant Commissioner of Income Tax, Circle-I, Virudhunagar, dated 22.09.1994 in PA.No.47-018-PZ-0193.

For Appellant : Mr.P.J.Rishikesh in all TCAs

For Respondent : M/s.V.Pushpa,
Junior Standing Counsel in all TCAs

COMMON JUDGMENT

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

These tax case appeals have been filed by the appellant / assessee, challenging the common order dated 30.08.2005 passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai, in I.T.A.Nos. 1407, 1411, 1408, 1409, 1410 and 2132 /Mds/2003, relating to the respective assessment years 1979-80, 1976-77, 1978-79, 1976-77, 1975-76 and 1977-78.

2.By order dated 01.08.2011, this court admitted the aforesaid tax case appeals on the following substantial question of law:

> “Whether on the facts and in the circumstances of the case, the ITAT was right in holding that penalty was leviable under section 271 (1) (c) of the Income Tax Act?"

3.The brief facts of the case would run thus:

3.1 The appellant viz., M/s.Ramamurthy Metal Decorating Industries P. Ltd is engaged in the business of card making, tin printing and purchase and sale of safety matches; and one A.Ramamurthy is its Managing Director. For the assessment years in question, while scrutinising the accounts of the appellants, the assessing officer found that there were cross transactions of purchases and sales of safety matches among the assessee group concerns and each member of the group was found to be granting certain “rebates” to some sister concerns at the end of the year and to be receiving similar “rebate” from them. These rebates mostly kept hidden in the respective accounts of purchases and sales. After examining the oral and documentary evidence, it was found by the assessing officer that such rebates represented a systematic and ingenious process of reducing the profits by fictitious claim and hence, the rebates debited by the concerned assesses in their accounts were disallowed as not related to business.

3.2 Aggrieved by the orders of the assessment, the assesses went on appeals, which were allowed and all the assessments were set aside.

3.3 In the fresh assessments, the assessing officer took the very same stand and the second round of assessment proceedings were again set aside by the Tribunal with direction to all the assesses to go for a permanent settlement of the dispute with the concerned Commissioner of Income Tax. Accordingly, the CIT, Madurai had a detailed pre-settlement discussions with all the assesses. The terms of settlement also included a condition regarding levy of penalties under section 271(1)(c). Based on the same, the assessing officer initiated penalty proceedings and issued show cause notices to the assesses, to which, no reply was filed. The assessing officer completed the assessment based on the settlement arrived at between the assesses and the department. The details of the penalty imposed are as under:-

M/s.Ramamurthy Metal Decorating Ind. P. Ltd.

1979-1980	Rs.2,33,596/-
1975-1976	Rs.3,81,243/-
1976-1977	Rs. 37,234/-
1978-1979	Rs.3,00,530/-

Sri A.Ramamurthy

1976-1977	Rs.1,10,442/-
1977-1978	Rs. 10,330/-

3.4 Challenging the orders of assessment, the appellants filed appeals before the CIT(A), who confirmed the penalties and dismissed the appeals. Aggrieved by the same, the appellants went on further appeals before the Tribunal, which also dismissed the appeals filed by the appellant. Therefore, the present tax case appeals by the appellants / assesses.

4.Heard both sides and perused the materials available on record.

5.It appears from the facts stated above that the assessing officer upon verification of the materials placed, had concluded that the rebates claimed by the appellants /assesses for the assessment years in question, were clearly the profits diverted by the fictitious claims and hence, the same were disallowed. In the second round of litigation as well, the assessing officer took the same stand and passed the reassessment orders, which were again challenged by the appellants. At this time, the Tribunal directed the appellants to go for a permanent settlement of the dispute with the concerned CIT. Pursuant to the said direction, settlement was entered into among the parties, one of the terms of which is that penalty under section 271(1)(c) will have to be levied for the assessment years at the minimum rate on the net excess payment disallowed, which was treated as concealed income. Accordingly, the assessing officer initiated the penalty proceedings, during the course of which, the assesses did not come forward to give proper explanation by way of reply. Hence, the assessing officer imposed penalty under section 271(1)(c) on the assesses, which was confirmed by both the first appellant authority and the Tribunal. The appellants questioned the said imposition of penalties by the assessing officer as affirmed by the appellate authorities in these tax case appeals.

6.To determine the substantial question of law involved herein, we consider it necessary to quote below the relevant findings of the appellate authorities, for ready reference:

First Appellate Authority

> "The second aspect of the case is the merit of imposition of the penalties. Although my primary decision is that all the penalties are to be confirmed because otherwise the concerned settlements stand vitiated, in my view even from an independent angle, these cases definitely warrant imposition of penalties. By certain ingenious and intricate adjustments in accounts, through kite flying entries of rebates given and received, the 14 Members of the group kept on playing the game of inter-diversions of profits for 6 to 7 years. The Government for almost 15 to 20 years had not collected the concerned taxes because the matters pertaining to Assessment Years 1975-76 to 1979-80 ultimately reached stage of settlement only in 1994. The appellant group never came for any settlement voluntarily. It was only on the directions of the ITAT, the Department and the Assessee had come to the discussion table for the eventual settlements. When the 14 concerns belonged to the same group, price fluctuation in the market would not warrant passing on rebates by one concern to another in a cyclical fashion. During the course of the relevant assessment proceedings, the group members were not able to substantiate the debits and credits for the rebates. All these definitely indicate the attempt of the group members not to make payments of correct taxes for the concerned Assessment Years by artificially manipulating the income figures. Therefore, in my opinion, these cases do not come

anywhere near the facts of any of the 7 cases mentioned before me by the Authorised Representative of the Appellant. Therefore, even on merit, these penalties have to be confirmed."

Tribunal

"On careful consideration of the facts and circumstance of the case we are of the view that the assesses have failed to offer explanation that there was no concealment of income in the returns filed by them. Concealment of income was due to a planned scheme resorted to by the group of assesses which was detected by the department. The assesses were indulging in concealment of income in a planned manner for several years. Penalty under section 271(1)(c) under such circumstances is imposable. We therefore uphold the orders of authorities below."

It is thus evident from the aforesaid findings of the authorities below that the appellants / assesses had concealed income, which was accepted after detection and the assessment was completed as per the terms of the settlement, which stipulated minimum penalty under section 271(1)(c). Based on the same, the assessing officer initiated the penalty proceedings by issuing show cause notices, to which, the appellants/assesses did not file any reply to substantiate their stand that there was no concealment of income. Therefore, the assessing officer imposed penalties on the appellants, which were also confirmed by the appellate authorities.

7.At this juncture, it is apt to refer to a decision of the Supreme Court in Mak Data (P) Ltd. v. CIT [(2013) 38 taxmann.com 448/ 358 ITR 593 (SC), wherein, it was held as under:

"7. The AO, in our view, shall not be carried away by the plea of the assessee like "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc. to explain away its conduct. The question is whether the assessee has offered any explanation for concealment of particulars of income or furnishing inaccurate particulars of income. Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise.

8. Assessee has only stated that he had surrendered the additional sum of Rs.40,74,000/- with

a view to avoid litigation, buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the income tax department. Statute does not recognize those types of defences under the explanation 1 to Section 271(1)(c) of the Act. It is trite law that the voluntary disclosure does not release the Appellant-assessee from the mischief of penal proceedings. The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty.”

Applying the ratio decidendi laid down in the aforesaid decision to the facts of the present case, wherein, the appellants had disclosed the income, after detection by the department and as per the terms of settlement, the assessing officer initiated the penalty proceedings, to which, the appellants / assesses did not submit any explanation to the effect that there was no concealment of income or furnishing of inaccurate particulars of such income, which culminated in imposition of penalties under section 271(1)(c), we do not find any infirmity or illegality in initiating the penalty proceedings and the consequential orders passed by the assessing officer as confirmed by the appellate authorities.

8.In such view of the matter, all these tax case appeals are dismissed by answering the substantial question of law against the appellants / assesses. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
Chennai “C” Bench

2. The Assistant Commissioner of Income Tax,
Circle -I, Virudhunagar.

3. The Commissioner of Income Tax (Appeals)-II
Madurai.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.7947
+6cc to Mr.P.J.Rishikesh, Advocate, S.R.No.8280

T.C.A.Nos. 205 to 210 of 2011

SRA(CO)
SB(03/03/2022)