

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : CHENNAI

**श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री चंद्र पूजारी, लेखा सदस्य के समक्ष।**

[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A.No.307/Mds/2015

निर्धारण वर्ष /Assessment year : 2008-2009

M/s. Tallboy Stationery P.
Ltd
No.130, Nelson Manickam
Road,
Aminjikarai,
Chennai 600 029

Vs. The Assistant Commissioner
of Income Tax,
Company Circle III(1)
Chennai 600 034

[PAN AACCT 3483H]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. G. Baskar, Advocate
: Shri. P. Radhakrishnan, IRS, JCIT

सुनवाई की तारीख/Date of Hearing : 05-08-2015

घोषणा की तारीख /Date of Pronouncement : 07-08-2015

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal by the assessee is directed against the order of the Commissioner of Income-tax (Appeals)-III, Chennai, dated 27.10.2014 for the assessment year 2008-2009.

2. The only grievance of the assessee in this appeal is with regard to levy of penalty u/s.271(1)(c) of the Act.

3. The facts of the case are that the assessee company is engaged in the business of manufacture stationery items and filed its return of income for the assessment year 2008-2009 on 30.09.2008 admitting a loss of ₹85,30,446/-. The Assessing Officer completed the assessment u/s.143(3) of the Act on 29.12.2010 determining the total income at ₹54,71,483/- and penalty proceedings u/s.271(1)(c) of the Act were initiated separately. Later, order u/s.271(1)(c) of the Act was passed by the Assessing Officer on 01.03.2013 levying a penalty of ₹12,95,349/- being minimum penalty @100% of tax sought to be evaded being three additions made in the original assessment order survived i.e. labour charges, purchase of asset and depreciation. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

4. The Commissioner of Income Tax (Appeals) observed that in the case of quantum addition, the Tribunal reversed the decision of the Commissioner of Income Tax (Appeals) and agreed with the findings of the Assessing Officer on the issue of labour charges and on the other two issues, which was the subject matter of this penalty, the order of

the Commissioner of Income Tax (Appeals) was upheld. On three issues, the Tribunal had given its findings and penalty was levied by the Assessing Officer on these issues only. The Commissioner of Income Tax (Appeals) observed that in view of the addition being upheld by the Tribunal, the Assessing Officer has rightly levied the penalty. Therefore, the Commissioner of Income Tax (Appeals) upheld the penalty levied by the Assessing Officer. Against this, the assessee is in appeal before us.

5. We have heard both the parties and perused the material on record. As seen from the findings of the Commissioner of Income Tax (Appeals), the Commissioner of Income Tax (Appeals) based his conclusion to confirm the penalty levied by the Assessing Officer on the reason that quantum addition was confirmed by the Tribunal in ITA No.1555/Mds/2011 vide order dated 15.12.2011. In our opinion, it is not appropriate to the Commissioner of Income Tax (Appeals) to base his conclusion on the basis of confirming of addition in quantum appeal without independently examine the levy of penalty u/s.271(1)(c) in its appeal order and to giving findings on that. Accordingly, we are inclined to remit the issue back to the file of the Commissioner of Income Tax (Appeals) to give specific findings with regard to levy of penalty and decide the issue in dispute in accordance with law.

6. The appeal of the assessee in ITA No.307/Mds/2015 is partly allowed for statistical purposes.

Order pronounced on Friday, 7th day of August, 2015, at Chennai.

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. GANESAN)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai
दिनांक/Dated:07.08.2015
KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |

