

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

**BEFORE HON'BLE SHRI MAHAVIR SINGH,
VICE PRESIDENT AND HON'BLE SHRI
MANOJ KUMAR AGGARWAL, AM**

**ITA No.2107/Chny/2019
(Assessment Year: 2010-11)**

Sri Saibaba Swamigal Thirumana Mandapam No. 42, Bharathi Street, Thiruvalluvar Nagar, Pondicherry – 605 003.	Vs.	ITO Ward -3, Pondicherry.
PAN/GIR No. AAVFS-4453-Q		
(Appellant)	:	(Respondent)

Appellant by	:	Shri T. Vasudevan (Advocate) & Shri. G. Aniesh (Advocate) – Ld. AR
Respondent by	:	Shri ARV Sreenivasan (Addl. CIT) – Ld. DR

Date of Hearing	:	06-04-2022
Date of Pronouncement	:	06-04-2022

ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2010-11 arises out of the order of learned Commissioner of Income Tax (Appeals), Puducherry Chennai [CIT(A)] dated 14.05.2019 confirming penalty of Rs.6.93 Lacs u/s. 271(1)(c) of the Act as levied by Ld. Assessing Officer [AO] vide order dated 27.02.2018.
2. The Ld. AR, drawing attention to the factual matrix, assailed the penalty. The Ld. AR also submitted that the penalty notice did not specify

exact charge against the assessee and therefore, the penalty would not be sustainable. The Ld. Sr. DR, on the other hand, submitted that the assessee concealed the receipts as evident from survey findings. The Ld. Sr. DR also submitted that clear charges were framed against the assessee. Having heard rival submissions, our adjudication would be as given in succeeding paragraphs.

3. The assessee being resident firm is stated to be engaged in renting out marriage halls. It was assessed u/s. 143(3) of the Act on 28.02.2013. The assessee was subjected to survey action u/s. 133A on 16.09.2009 wherein a register containing the details of number of marriages and other small functions conducted during financial years 2006-07 to 2009-10 was found and impounded. Based on the same, it was alleged by Ld. AO that there was suppression of rental receipts to the extent of Rs.47.30 Lacs and accordingly, the same was added to the income of the assessee. The quantum addition was based on estimated rental receipts generated by the assessee by conducting the functions during the year. Upon further appeal, Ld. CIT(A) allowed 50% of the amount as estimated expenditure thus sustaining addition of Rs.23.65 Lacs.

4. Consequently, penalty proceedings were initiated against the assessee in the assessment order. The assessee defended the same by submitting that the additions were estimated additions without reference to regularly maintained books of accounts. The penalty would not be automatically attracted merely because there were some estimated additions which were made solely on the basis of statement recorded during the course of survey action. However, disregarding the same, Ld. AO levied penalty of Rs.6.93 Lacs u/s 271(1)(c). The Ld. CIT(A) upheld the penalty on the ground that concealment was established with clear

material found in the premises of the assessee. Aggrieved, the assessee is in further appeal before us.

5. Upon careful consideration of factual matrix, it could be seen that the additions as made by Ld. AO in the quantum order were estimated additions on the basis of a register containing the details of number of functions conducted at assessee's premises. However, the same are mere estimated additions and there is no corroborative material on record to establish that the assessee actually received receipts of that magnitude. The same is further evident by the fact that Ld. CIT(A) has granted allowance of 50% for estimated expenditure and reduced the quantum addition. In our considered opinion, additions which are mere estimated additions do not attract penalty u/s 271(1)(c) and it is not a fit case of levy of penalty. Our view is duly fortified by the decision of coordinate bench of Chennai Tribunal in the case of **Sri Saibaba Guest House V/s ITO (ITA No.2784/Chny/2018 dated 04.08.2021)** wherein the penalty, on similar factual matrix, has been cancelled. Accordingly, we delete the impugned penalty and allow the appeal of the assessee.

6. The appeal stand allowed in terms of our above order.

Order pronounced on 06thApril, 2022.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Chennai; Dated : 06-04-2022