

**THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 282/VIZ/2017
(Asst. Year : 2002-03)**

Tarakarama Enterprises, vs. ITO, Ward-2,
Pacherlanka, Chellapalli Mandal, Machilipatnam.
Krishna District.

PAN No. AADFT 4317 J
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Shri P.S. Murthy – Sr.DR

Date of hearing : 21/02/2018.

Date of pronouncement : 23/02/2018.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals), Vijayawada, dated 14/12/2016 for the Assessment Year 2002-03.

2. Facts of the case, in brief, are that the assessee is a firm, engaged in the business of exhibition of films in the name of M/s.Tarakarama Theatre, filed its return of income by admitting loss of Rs. 1,72,590/-. The case of the assessee was selected for scrutiny and assessment is completed under section 143(3) of the

Income Tax Act, 1961 (hereinafter referred to as the 'Act'). In the assessment order, the Assessing Officer has not allowed the assessee's claim of expenditure on development of land & building as there was no supporting evidence and determined the profit on sale of building at Rs. 13,03,252/- and raised a demand of Rs.6,67,397/-. Accordingly, penalty proceedings were initiated under section 271(1)(c) of the Act.

3. On appeal, Id. CIT(A) confirmed the penalty order passed by the Assessing Officer.

4. Aggrieved, the assessee is in appeal before the Tribunal.

5. Learned counsel for the assessee has submitted that the notice issued by the Assessing Officer is not clear whether notice issued under section 271(1)(c) is for concealment of income or furnished inaccurate particulars. Therefore, the notice issued by the Assessing Officer is not a valid notice in the light of the latest judgment of the Hon'ble Supreme Court in the case of *CIT Vs. SSA's Emerald Meadows* [(2016) 73 taxman.com 248 (SC)] and also the Hon'ble Jurisdictional High Court of Telangana & A.P. in I.T.T.A. No. 684/2016 in *Pr.CIT Vs. Smt. Baisetty Revathi* dated 30/07/2017.

6. On the other hand, learned Departmental Representative has submitted that at the time of issuance of notice, the Assessing

Officer is not sure about the penalty either for concealment of income or furnishing inaccurate particulars. Therefore, it is a premature notice and submitted that the notice issued by the Assessing Officer is a valid notice.

7. We have heard both the sides, perused the material available on record and orders of the authorities below.

8. The only issue for adjudication before us is whether the notice issued by the Assessing Officer dated 29/03/2006 is valid or not. For the sake of convenience, the operative part of the notice is extracted as under:-

"Whereas in the course of proceedings before me for the Assessment Year 2002-03, it appears to me that you:-

x x x x x

x x x x x

** have concealed the particulars of your income or furnished inaccurate particulars of such income."*

9. From the above, it is not clear whether Assessing Officer has initiated penalty proceedings for concealment of particulars of income or for furnished inaccurate particulars. Therefore, the notice issued by the Assessing Officer is a vague notice and is liable to be quashed in the light of the decision of the Hon'ble Jurisdictional High Court in the case of Smt. Baisetty Revathi (supra) and also the decision of the Hon'ble Supreme Court in the case of SSA's Emerald Meadows (supra). The coordinate bench of

the Visakhapatnam Tribunal in the case of Konchada Sreeram Vs. ITO in ITA No. 388/VIZ/2015, by order dated 06/10/2017, has considered the validity of notice by following the above referred to judgments and held that notice issued by the Assessing Officer is not a valid notice and accordingly quashed. For the sake of convenience, the relevant portion of the order is extracted as under:-

"6. We have heard both the parties and perused the material placed on record. In this case, the assessee has not filed the return of income. The department has conducted the survey u/s 133A and completed the assessment u/s 143(3) on total income of Rs.15,43,041/- and initiated penalty proceedings u/s 271(1)(c). The fact is that long term capital gains for sale of the property have come to the notice of the assessing officer because of the efforts made by the department. Therefore, the AO has initiated the penalty proceedings u/s 271(1)(c) and issued show cause notice in the printed proforma of penalty. The AO has issued the penalty notice which reads as under :

"WHEREAS in the course of the proceeding before me for the Asst. Year 2007-08 it appears to me that you have concealed the particulars of your some or furnished inaccurate particulars of such income."

6.1. From the notice issued by the AO, it is observed that the assessing officer had issued the notice for concealment of income or for furnishing of inaccurate particulars. As per the notice, the assessing officer was not sure of which limb of the offence he sought the explanation from the assessee, whether it was for the concealment of income or for furnishing of inaccurate particulars. As per the decision of the Hon'ble Jurisdictional High Court cited, for starting the penalty proceedings, the condition precedent is that the assessing officer must be satisfied that a person has either concealed the particulars of his income or furnished inaccurate particulars of such income. The person who is accused of the conditions mentioned in Section 271 should be made aware of the grounds on which imposition of penalty is proposed as he has a right to contest such proceedings and should have the full opportunity to meet the case of the revenue so as to show that the conditions stipulated in Section 271(1)(c) do not exist and that he is not liable to pay the penalty. The Hon'ble High Court of Karnataka in the case law cited held that the practice of the revenue in sending the printed form where all the grounds mentioned in 271(1)(c) are mentioned would not

satisfy the requirement of law when the consequence of the assessee not rebutting the initial presumption is serious in nature and has to pay the penalty ranging from 100% to 300% of the tax liability. As the provisions of section 271(1)(c) have to be strictly construed, the Hon'ble High court of Karnataka mandated that the notice issued should be set out the grounds which the assessee has to meet specifically, otherwise the principles of natural justice would be offended as the show cause notice would be vague. On the similar facts, Hon'ble Supreme Court dismissed the SLP in the case of SSA's Emerald Meadows (2016) 73 Taxman.com 248(SC). Ld. DR's argument that the case is distinguishable on facts is not acceptable since the Ld. DR relied on the passing observation of the Hon'ble High Court of AP. In the assessee's case, the issue is the defective notice u/s 271(1)(c) but not the penalty order. Unless the notice issued u/s 271(1)(c) is valid the penalty order cannot be held to be valid. The assessing officer did not strike off the irrelevant column in the notice and made known the assessee whether the penalty was initiated for the concealment of income or for furnishing the inaccurate particulars. In the assessment order also the AO simply recorded that the penalty proceedings u/s 271(1)(c) are initiated separately. Neither in the assessment order nor in the penalty notice, the assessing officer has put the assessee on notice for which offence, the penalty u/s 271 was initiated. Therefore, the case is squarely covered by the decision of the Hon'ble Jurisdictional High Court of cited (supra) wherein the Hon'ble high court held as under:

"On principle, when penalty proceedings are sought to be initiated by the revenue under Section 271(1)(c) of the Act of 1961, the specific ground which forms the foundation therefore has to be spelt out in clear terms. Otherwise, an assessee would not have proper opportunity to put forth his defence. When the proceedings are penal in nature resulting in imposition of penalty ranging from 100% to 300% of the tax liability, the charge must be unequivocal and unambiguous. When the charge is either concealment of particulars of income or furnishing of inaccurate particulars thereof, the revenue must specify as to which one of the two is sought to be pressed into service and cannot be permitted to club both by interjecting an 'or' between the two, as in the present case. This ambiguity in the show-cause notice is further compounded presently by the confused finding of the Assessing Officer that he was satisfied that the assessee was guilty of both.

We are therefore of the opinion that the order under appeal does not brook interference on any ground. We find no question of law, much less a substantial one, arising for consideration warranting admission of this appeal."

6.2. On the similar facts, the Coordinate Bench of ITAT, Visakhapatnam in ITA No.229/Viz/2015 in the case of Narayana Reddy Enterprises, following the order of the Coordinate Bench in the case of Smt. Makina Annapurna Vs. ITO, Visakhapatnam in ITA Nos.604 &

605/Vizag/2014 dated 2.2.2017 held that non-striking of the irrelevant column renders the notice issued u/s 271 as invalid. Respectfully, following the decision of the Hon'ble AP High Court cited supra and the decision of this Tribunal cited (supra), we hold that the notice issued u/s 271 is invalid and consequent penalty imposed by the AO is cancelled. "

10. We therefore, respectfully following the decision of the Hon'ble Supreme Court in the case of SSA's Emerald Meadows (supra) and also the decision of Hon'ble Jurisdictional High Court in the case of Smt.Baisetty Revathi (supra) and also the decision of the coordinate bench of the tribunal in the case of Konchada Sreeram (supra), we hold that the notice issued under section 274 read with section 271(1)(c) is invalid and, therefore penalty imposed by the Assessing Officer is cancelled.

11. In the result, appeal filed by the assessee is allowed.

Order Pronounced in the open Court on this 23rd day of February, 2018.

Sd/-

sd/-

(D.S. SUNDER SINGH)
Accountant Member

(V. DURGA RAO)
Judicial Member

Dated : 23rd February, 2018.

vr/-

Copy to:

1. *The Assessee - Tarakarama Enterprises, Pacherlanka, Chellapalli Mandal, Krishna District.*
2. *The Revenue - ITO, Ward-2, Machilipatnam.*
3. *The Pr.CIT, Vijayawada.*
4. *The CIT(A), Vijayawada.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.