

**IN 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. 197/VIZ/2017  
(Asst. Year : 2012-13)**

ITO, Ward-1,  
Anakapalle.

vs.

Kota Subba Reddy,  
D.No. 3-65, Konda Koppaka,  
Batlapudi Post, Anakapalle.

(Appellant)

PAN No. APHPK 6138 B  
(Respondent)

Assessee by : None

Department By : Shri M.R. Bangari – Sr.DR

Date of hearing : 27/02/2018.

Date of pronouncement : /03/2018.

**ORDER**

**PER V. DURGA RAO, JUDICIAL MEMBER**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-2, Visakhapatnam, dated 02/01/2017 for the Assessment Years 2012-13.

**2.** Facts of the case, in brief, are that the assessee is an individual engaged in the contract business and also having professional income. The assessee has filed his return of income by admitting total income of Rs. 10,58,900/-. The case of the assessee was selected for scrutiny. The Assessing Officer was

issued notice under section 143(2)/142(1) on various occasions, but assessee did not respond to the notice issued. Accordingly, the Assessing Officer completed the assessment under section 144 of the Act by making the following additions:-

- 1) Capital increase Rs. 12,29,628/-
- 2) Secured loans Rs. 19,56,283/-
- 3) Estimation of Income from contracts Rs. 2,25,430/-
- 4) Estimation of Professional income Rs. 26,93,405/-

The Assessing Officer, thus, determined the total income at Rs. 63,73,820/-. Subsequently Assessing Officer has initiated penalty proceedings and issued show-cause notice as to why penalty under section 271(1)(c) should not be levied. In response to the notice, assessee has contended during the penalty proceedings that Assessing Officer has completed the assessment without giving sufficient opportunity and made the impugned additions on estimate basis. The assessee further contended that the impugned penalty was levied on the additions made on *ad hoc* and estimate basis and that there is no element of concealment of income and, hence, requested to drop the penalty proceedings. The Assessing Officer was not convinced with the explanation given by the assessee and levied the penalty of Rs. 15,94,480/- under section 271(1)(c) of the Act.

**3.** On appeal before the Id. CIT(A), it was submitted that a show-cause notice was issued on 14/09/2015 and without giving sufficient opportunity, penalty was levied and prayed that same may be deleted. The Id. CIT(A) by considering the submissions made by the assessee and also the additions made by the Assessing Officer, deleted the penalty by observing as under:-

*"6. I find that the assessment was completed' exparte on the basis of some ad hoc estimate without reference to any material evidence or comparable material information. It is seen that the assessee did not file appeal against the assessment. Subsequently, the AO proceeded with the penalty proceedings, and it is noted that only a show cause notice was issued on 14.09.20.15 fixing the hearing on 22.09.2015 and subsequently the impugned' penalty was levied on 24.09.2015. I find that the assessee was not afforded adequate opportunity to prove its case, nor the AO gathered evidence to prove concealment. Though non-appearance, and non-compliance in furnishing information could be a valid basis to estimate income and make additions in the assessment, the same alone could not be the basis to levy penalty unless the assessee failed to' prove its case during the penalty proceedings also. I find that the AO did not offer adequate opportunity to the assessee and also there is no material on record to indicate that the assessee has furnished inaccurate particulars of income or concealed particulars of income. In these factual scenario, I am of the view that this is not a fit case for levy of penalty u/s.271(1)(c). Accordingly the AO is directed to delete the impugned penalty.*

**4.** On being aggrieved, Revenue carried the matter in appeal before the Tribunal.

**5.** Ld. Departmental Representative supported the order passed by the Assessing Officer.

**6.** We have heard the Id. DR and also gone through the orders of the authorities below.

7. In this case, Assessing Officer has initiated penalty proceedings on the basis of additions made by him during the assessment proceedings, in respect of capital increase, secured loans, estimation of income from contracts and estimation of professional income. Out of these four additions, two of them are on estimate basis. The Assessing Officer has issued a notice fixing the case for hearing on 22/09/2014. On 22/09/2014, assessee filed a letter and requested the Assessing Officer to grant some more time to explain his case. The Assessing Officer without giving proper opportunity to substantiate the assessee's case, penalty is levied on 24/09/2015. The Id. CIT(A) gave a categorical finding, in his order, that Assessing Officer did not offer adequate opportunity to the assessee and also there is no material on record to indicate that the assessee has furnished inaccurate particulars of income or concealment of income. We have also gone through the penalty order passed by the Assessing Officer and find that nowhere Assessing Officer has stated that assessee had furnished inaccurate particulars of income or concealed the income. Thus, it is clear that Assessing Officer is not clear in imposing penalty, on which basis penalty was levied. Penalty cannot be levied simply because of non-filing of appeal by the assessee against the assessment order, is not an automatic.

Penalty proceedings are different from the assessment proceedings. The Assessing Officer while imposing penalty under section 271(1)(c), he has to establish that the assessee either concealed the income or filed inaccurate particulars. In this case, no such finding is given. In view of the above, we find no infirmity in the order passed by the Id. CIT(A). Thus, this appeal filed by the revenue is dismissed.

**8.** In the result, appeal filed by the Revenue is dismissed.

Order Pronounced in open Court on this 07<sup>th</sup> day of March, 2018.

Sd/-  
**(D.S. SUNDER SINGH)**  
Accountant Member

sd/-  
**(V. DURGA RAO)**  
Judicial Member

**Dated : 07<sup>th</sup> March, 2018.**

**vr/-**

Copy to:

1. The Assessee - Kota Subba Reddy, D.No. 3-65, Konda Koppaka, Batlapudi Post, Anakapalle.
2. The Revenue - ITO, Ward-1, Anakapalle.
3. The CIT-2, Visakhapatnam.
4. The CIT(A)-2, Visakhapatnam.
5. The D.R., Visakhapatnam.
6. Guard file.

By order

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