

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ' B ' SMC Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member**

**ITA No.763/Hyd/2016**  
(Assessment Year: 2009-10)

Shri Ravinder Reddy Pallavali Hyderabad PAN: AMHPP 1849 B (Appellant)	Vs	Income Tax Officer Ward 8(2) Hyderabad  (Respondent)
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For Assessee :	Shri S. Rama Rao
For Revenue :	Smt. N. Swapna, DR

Date of Hearing:	15.03.2018
Date of Pronouncement:	28.03.2018

**ORDER**

This is assessee's appeal for the A.Y 2009-10 against the learned CIT (A)-2, Hyderabad, dated 22.02.2016.

2. Brief facts of the case are that the assessee, an individual, deriving income from commission and sub-contracts, filed his return of income for the A.Y 2009-10 on 26.03.2010 declaring a total income of Rs.2,85,000. During the assessment proceedings u/s 143(3) of the Act, the AO required the assessee to file certain information particularly, with regard to the deposits into the Bank A/c of the assessee in ING Vysya Bank Ltd, Khairatabad Branch, Hyderabad and also the sources for purchase of plot No.70 admeasuring 1000 sq. yards in survey No.41/Part & 43 situated at Bandlaguda Jagir Village. The

assessee was also asked to file evidence for payments claimed as deduction u/s 80C of the Act.

3. In response to the show-cause notice, the assessee filed a letter dated 21.09.2011 stating that he is a small contractor and is executing small work and the amounts deposited in the Bank A/c are nothing but the money received from his family members who are agriculturists and also that he has given loans to the farmers and the same were collected during the year. He also filed statements and cash flow statements before the AO. The AO, was however, not satisfied with the explanation given by the assessee. The assessee therefore, came forward to admit an additional income of Rs.15.00 lakhs and promised to pay taxes. As the assessee voluntarily admitted, the assessment was completed bringing Rs.15.00 lakhs also to tax. The assessee accepted the said assessment and did not file any appeal before the CIT (A).

4. Thereafter, the AO initiated the penalty proceedings u/s 271(1)(c) of the Act. Relying upon the judgment of the Hon'ble Karnataka High Court in the case of CIT vs. Sangameshwara Associates, wherein it was held that despite the income being offered by the assessee in the return of income filed in response to the notice u/s 148, it attracts the levy of penalty u/s 271(1)(c) of the Act, the AO levied the minimum penalty of Rs.4,90,000. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before us by raising the following grounds of appeal:

*“1. The order of the learned CIT (A) is erroneous both on facts and in law.*

*2. The learned CIT (A) erred in confirming the action of the AO in levying penalty u/s 271(1)(c) of Rs.4,90,000/-*

*3. The learned CIT (A) ought to have seen that there is neither concealment of income nor furnishing of inaccurate particulars of income and therefore, penalty u/s 271(1)(c) is not leviable”.*

6. The learned Counsel for the assessee submitted that the assessee had admitted additional income because the assessee did not have the necessary confirmation letters from the parties and the AO has brought the same to tax on voluntary admission of the assessee. He submitted that the penalty proceedings u/s 271(1)(c) of the Act are attracted only when there is concealment of income or furnishing of inaccurate particulars of income. According to him, the AO has not been able to find any positive evidence to hold that the assessee has furnished any inaccurate particulars of income or has concealed his income. Therefore, according to him, the penalty is liable to be deleted.

7. The learned DR, on the other hand, supported the orders of the authorities below and submitted that the assessee has admitted the additional income only when he was confronted and directed to produce the necessary evidence to substantiate his claim during the assessment proceedings. He submitted that the voluntary disclosure of higher income also attracts penalty u/s 271(1)(c) of the Act and relied upon the decision of the Hon'ble Karnataka High Court in the case of CIT vs.

Sangameshwara Associates (Supra) for coming to this conclusion.

She also placed reliance upon the following other decisions:

- a) *MAK Data (P.) Ltd. v. Commissioner of Income-tax – II reported in 358 ITR 593 (S.C)*
- b) *CIT Vs. Rakesh Suri reported in 331 ITR 458 (All)*

8. Having regard to the rival contentions and the material on record, I find that the penalty u/s 271(1)(c) of the Act is leviable for concealment of income or furnishing of inaccurate particulars of income. In the case before us, the assessee was directed to explain the sources for the deposits into his Bank A/c and the assessee had explained that these are the amounts given to him by the family members and also the loans returned by some of the farmers to whom he had advanced the loans earlier. The assessee also filed statement before the AO. It is the case of the assessee that he could not substantiate such claim and therefore, he offered the additional income of Rs.15.00 lakhs. As rightly pointed out by the learned Counsel for the assessee, the AO has disbelieved the statement of the assessee and it is not proved that the statement given by the assessee is false or incorrect. It is settled law that every addition will not automatically attracts penalty. In the absence of any evidence that the assessee has furnished inaccurate particulars or has concealed his income, I do not agree with the penalty order passed by the AO and confirmed by the CIT (A). The decisions relied upon by the learned DR are distinguishable on facts. In the case of MAK Data (Supra), there was a survey u/s 133A on the assessee and certain documents were impounded, but the

assessee did not offer any income thereon in his return of income filed thereafter, but offered additional income, when confronted during the assessment proceedings. In the case of Rakesh Suri (Supra), the assessee therein had offered the income after thorough and deep enquiry and finding that the transaction had not taken place.

9. In the case of CIT vs. Sangameshwara Associates (Supra), the Hon'ble Karnataka High Court was dealing with the case of an assessee, who had disclosed the income pursuant to a search conducted at the premises of the assessee, and it was held to be concealment of income, even in a situation where the assessee had filed a return after the search but before the receipt of a notice. The case before us is not a case of search or survey, but is a case of regular assessment, where the assessee was asked to explain the sources of cash deposits into his bank a/c and on not being able to substantiate the same, offered Rs.15.00 lakhs as his income. In my opinion, the decision of the Hon'ble Supreme Court in the case of Reliance Petroproducts reported in (2010) 322 ITR 0158, is applicable to the facts of the case before me. The Hon'ble Supreme Court had held that even an incorrect claim in the return of income will not amount to concealment of income or furnishing of inaccurate particulars of income. The relevant paragraphs are reproduced hereunder for ready reference:

*“7. As against this, Learned Counsel appearing on behalf of the respondent pointed out that the language of Section 271(1)(c) had to be strictly construed, this being a taxing statute and more particularly the one providing for penalty. It was pointed out that unless the wording directly covered the assessee and the fact situation herein, there could not be any penalty under the Act. It*

was pointed out that there was no concealment or any inaccurate particulars regarding the income were submitted in the Return.

Section 271(1)(c) is as under:-

*"271(1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person*

*(c) has concealed the particulars of his income or furnished inaccurate particulars of such income."*

A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the Learned Counsel for Revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the Section 271(1)(c) would embrace the meaning of the details of the claim made.

It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The Learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. In *Commissioner of Income Tax, Delhi Vs. Atul Mohan Bindal* [2009(9) SCC 589], where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income. This Court referred to another decision of this Court in *Union of India Vs. Dharamendra Textile Processors* [2008(13) SCC 369], as also, the decision in *Union of India Vs. Rajasthan Spg. & Wvg. Mills* [2009(13) SCC 448] and reiterated in para 13 that:-

*"13. It goes without saying that that for applicability of Section 271(1)(c), conditions stated therein must exist."*

10. Respectfully following the same, the grounds of appeal of the assessee are allowed.

11. In the result, assessee's appeal is allowed.

Order pronounced in the Open Court on 28<sup>th</sup> March, 2018.

**Sd/-**  
**(P. Madhavi Devi)**  
**Judicial Member**

Hyderabad, dated 28<sup>th</sup> March 2018.

***Vinodan/sps***

Copy to:

- 1 Shri S.Rama Rao, Advocate, Flat No.102, Shriya's Elegance, 3-6-643, Street No.9, Himayatnagar, Hyderabad 500029
- 2 ITO Ward 8(2) Signature Towers, Kondapur, Hyderabad
- 3 CIT (A)-2 Hyderabad
- 4 Pr. CIT – 2 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

*By Order*