

**THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A-SMC", HYDERABAD**

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

**ITA No. 144/Hyd/2018
A.Y: 2007-08**

Sri Lakshmi Talkies,
Warangal.

vs. Asst. Commissioner of
Income-tax, Circle – 1,
Warangal.

PAN- AAZFS 9600 B

(Appellant)

(Respondent)

Assessee by : Shri A.V. Chalamiah
Revenue by : Shri Sunku Srinivas

Date of hearing : 11-05-2018
Date of pronouncement : 11-05-2018

ORDER

This is an appeal filed by the assessee directed against the order the Ld. CIT(A) - 3, Hyderabad dated 23/11/2017 passed u/s 250 of the IT Act, 1961 (the Act), wherein the order passed by the Assessing Officer (A.O) u/s 271(1)(c) of the 'Act' has been confirmed.

2. Before me, the ld. AR of the assessee submitted that the Assessing Officer initiated the penalty proceedings by issue of a notice u/s 274 r.w.s. 271(1)(c) on 30.01.2015. He submitted that while issuing the said notice, the Assessing Officer did not mention whether the notice is issued for concealment of income or for furnishing of inaccurate particulars of income. Therefore, the notice is not validly

issued. Consequently, the order passed u/s 271(1)(c) also is not valid.

2.1 Further, ld. AR submitted that when the said fact was brought to the notice of the CIT(A) in the grounds of appeal, the CIT(A) ignored the same and confirmed the assessment order.

3. I have heard the rival contentions. The assessee has filed the copy of the notice dated 30/01/2015 issued u/s 274 of the Act r.w.s 271(1)(c) for the impugned assessment year which is available on record. The third para of the notice, reads as under:

“Have concealed the particulars of your income furnished, inaccurate particulars of such income”

Even the first part of the notice which refers to penalty for non-filing of return of income is also not struck off.

3.1 Thus, it is clear that the notice did not specify the limb of Sec. 271(1)(c) of the IT Act, under which penalty proceedings have been initiated.

3.2 I find that the Hon'ble Karnataka High Court in the case of CIT Vs M/s SSA's Emerald Meadows, ITA No. 380 of 2015 judgment dated 23.11.2015 had at para 3 and 4 held as follows:

“3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the A.O u/s 274 r.w.s 271(1)(c) of the IT Act to be bad in law as it did not specify which limb of section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or

furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of CIT Vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565.

4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed”.

3.3 The Hon’ble Supreme Court vide order in SLP No. 11485/2016 dated 05.08.2016 in the case of CIT Vs M/s SSA’s Emerald Meadows, ordered as follows:

“Delay condoned

We do not find any merit in this petition. The special leave petition is, accordingly, dismissed. Pending application, if any, stands disposed of”.

3.4 Hence, the issue in question is no more *res-integra*.

3.5 Hence, respectfully following the judgment of Hon’ble Supreme Court (supra) on this issue, I cancel the order of penalty for the year under consideration, as bad in law.

4. In the result appeal of the assessee is allowed.

Pronounced in the open court on 11th May, 2018.

Sd/-
(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 11th May, 2018.

KRK

Copy to:

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- 2) *ITO, Ward- 17(2), Hyderabad.*
- 3) *CIT(A) -5, Hyderabad.*
- 4) *The Pr.CIT, - 5, Hyderabad.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*