

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

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

**ITA No.1881/Hyd/2017
Assessment Year: 2012-13**

Sri Gandra Venkata
Ramana Reddy,
Warangal.

vs. The Asst. Commissioner of
Income Tax, Circle -1
(i/c), Warangal

PAN – AIEPG9935A
(Appellant)

(Respondent)

Assessee by : Shri K.V. Chalamaiah
Revenue by : Shri M. Naveen

Date of hearing : 29-05-2018
Date of pronouncement : 06-06-2018

ORDER

PER B. RAMAKOTAIAH, AM:

This is an appeal by Assessee against the confirmation of penalty of Rs. 2,76,555/- u/s 271(1)(c) of the IT Act on the reason that Assessee has not declared the rental income on the property.

2. Briefly stated facts leading to the penalty are that Assessee was an MLA and was also carrying business of maintaining a petrol bunk and transport business in individual capacity. In the course of scrutiny proceedings, A.O noticed that there was a rental income to the tune of Rs. 8,95,000/- from M/s Unitech Wireless and M/s Axis Bank, and the TDS was credited to the individual account and Assessee also made the claim. Since the corresponding income was not offered, A.O asked Assessee as to why the same should not be brought to tax. It was

submitted that Assessee owns the property in HUF capacity and those companies have remitted to TDS on the individual PAN number and since the mistake could not be rectified, Assessee only claimed the TDS while incomes are offered in the HUF status. On the reason that Assessee was not able to prove that HUF had ownership of the property deriving rental income, A.O brought the same to tax in the hands of the individual. Assessee did not contest the same. A.O however levied the penalty on the above amount at Rs. 2,76,555/- holding that Assessee has furnished inaccurate particulars thereby tried to conceal income to an extent of Rs. 8,95,000/-

3. Before Ld. CIT(A), it was submitted that the property belongs to HUF, the TDS was made wrongly in the individual PAN number. Because of the above mistake the rental income and corresponding TDS was reflected in Form 26AS of the appellant / Assessee. It was also submitted that Assessee has filed HUF return for the A.Y 2012-13 and offered by rent received, paid taxes without claiming the TDS amount which was reflected in the individual hands. It was submitted that Assessee has not furnished any inaccurate particulars. Ld. CIT(A) however did not agree and upheld the penalty stating as under:

“6. The facts and circumstances of the case, submissions of the appellant and penalty order were perused. As seen from the penalty order, the finding of the assessing officer vide para 7.0 of the penalty order is that “Thus, the explanation that the rental income belongs to HUF is an afterthought once the A.O pointed it out. Therefore, it is clear that this is a deliberate attempt by the assessee to furnish inaccurate particulars of his income”. However, the appellant in his written submissions states that the rents from Unitech Wireless and Axis Bank

belongs to HUF of the appellant and the TDS was made wrongly on Individual PAN of the appellant. Subsequently, the appellant filed his HUF return for the A.Y. 2012-13 and offered the rents received from Unitech Wireless and Axis Bank respectively Rs. 5,70,000/- & 3,00,000/- and paid the taxes without claiming the TDS amount. It is clear from the appellants own submissions that the appellant has filed his HUF return after the A.O pointed it out and paid the taxes. It is to be noted here that filing of return belatedly and paying of taxes thereon will not exonerate the appellant from penalty u/s. 271(1)(c) where the appellant himself admitted that his HUF return was filed subsequent to A.O pointed it out. The filing of the HUF return after completion of assessment proceedings (in the status of individual) was brought to the notice of the appellant's AR at the time of appeal hearing. Keeping in view the fact that the filing of the HUF return was a considered after-thought. Following the ratio of the decisions of the Apex Court in the case of Union of India Vs. Dharamendra Textile Processors [2007] 295 ITR 244 (SC), and MAK Data P. Ltd Vs. CIT [263 CTR 1] (SC), the penalty order is upheld and the ground no.1 in appeal is dismissed".

4. In the course of present assessment proceedings apart from the grounds raised, Assessee also raised an additional ground that the penalty notice does not specify that A.O intended to impose penalty on concealment of income or for furnishing inaccurate particulars of such income. Since the assessment order clearly indicates that penalty proceedings were initiated for furnishing of inaccurate particulars of income and the penalty order also has levied only for that, we do not find any reason to entertain the additional ground of appeal at this stage.

5. Coming to the merits of the case, it was the submission of Ld. Counsel that the properties are owned by HUF and referred to the returns filed in HUF capacity. It was submitted that Assessee has again paid taxes in the HUF capacity correctly, but did not prefer appeal on the

order on the reason that Assessee has claimed TDS in the individual return.

6. Ld. DR however submitted that claim of HUF is an afterthought and the returns were filed belatedly could not be accepted and could not be relied. As Assessee has not offered the income while claiming the TDS the penalty is warranted.

7. We have considered the rival contentions. As seen from the returns filed in the individual capacity as well as HUF capacity, Assessee has businesses in both capacities. Even though the returns for HUF filed belatedly, there were incomes from business to an extent of Rs. 50,47,110/- in A.Y 2010-11. Along with the same Assessee also offered other incomes from house property, capital gains and other sources, the total income in the HUF capacity was to the tune of Rs. 51,74,081/-. In the impugned A.Y 2012-13, Assessee offered incomes from house property from the above properties and also from transport business, including income from theatres and total income offered was to the tune of Rs. 36,60,876/-. In the balance sheet of HUF, there are properties shown, whereas in the in the balance sheet of the individual there are no properties shown but only the business assets. In view of the above, it cannot be stated that the properties does not belong to HUF. Just because TDS was made and credited to the individual account, the contentions of Assessee that the properties belong to HUF cannot be rejected. Whatever may be the reason for accepting the addition the same does not lead to levy of penalty unless it is established that

Assessee owns the properties. There is no such evidence on record that Assessee owns the properties and the rental income belongs to individual income. Since Assessee has incomes in both the capacities of individual and HUF, there could be mistake in remitting the TDS pertaining to HUF status to individual status. Since the mistake could not be rectified, Assessee only claimed the TDS in individual capacity, but paid the taxes in HUF capacity separately. Considering the facts of the case, we are of the opinion that there are bonafide reasons in not offering the income in individual capacity. Keeping that in mind, we agree with Assessee's contentions that it does not lead to levy of penalty for furnishing inaccurate particulars. The penalty is accordingly deleted.

8. In the result appeal is considered partly allowed.

Pronounced in the open court on 06th June, 2018.

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 06th June, 2018.

KRK

- 1) Sri Gandra Venkata Ramana Reddy, # 2-12-173, Vidyaranyapuri,
- 2) ACIT, Circle-1(i/c), Warangal.
- 3) CIT(A) -3, Hyderabad.
- 4) The Pr.CIT-3, Hyderabad.
- 5) The Departmental Representative, I.T.A.T., Hyderabad.
- 6) Guard File