

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

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

आयकर अपील सं./I.T.A.No.22/Viz/2018
(निर्धारण वर्ष/Assessment Year:2014-15)

The ACIT
Circle-2(1)
Guntur

Vs. Sri Mittapalli Rajendra Babu
D.No.3-29-13, 4th Lane,
Krishna Nagar
Guntur - 522 006

[PAN : ACJPB0325Q]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से/ Respondent by

: Shri DJP Anand, DR
: Shri I Kama Sastry, AR

सुनवाई की तारीख / Date of Hearing

: 09.07.2018

घोषणा की तारीख/Date of Pronouncement

: 18.07.2018

आदेश /ORDER

Per V.DURGA RAO, Judicial Member:

This appeal is filed by the Revenue against the order of the
Commissioner of Income Tax (Appeals), [CIT(A)]-1, Guntur dated

20.12.2017 for the assessment year 2014-15. The revenue has raised the following grounds of appeal :

1. In the light of the facts and circumstances, was the Ld.CIT(A) correct in admitting additional ground of appeal, since adequate opportunity was ought to be given to the AO under the doctrine of natural principles of justice?
 2. In the light of the facts and circumstances, was the Ld.CIT(A) correct in allowing the additional ground of appeal is purely legal, since the additional ground of appeal involved examination of material evidence and also of appraisal of facts, for which the A.O's opinion should have been solicited?
 3. The Ld.CIT(A) erred in allowing the appeal of the assessee that he was not appraised of the charge he was facing given the charge was amply clear and the assessee did not contest the charge on which the penalty was being levied at any point during the proceedings?
 4. Any other grounds that may be urged at the time of hearing.
2. The facts of the case in brief are that the assessee is proprietor of M/s Pragati Estates, deriving income from salary, construction business, income from house property, long term capital gains and other sources. In this case, survey proceedings u/s 133A was carried out by the Dy. Director of Income Tax (Inv.), Guntur on 05.03.2014. During the course of survey proceedings, the assessee has admitted an additional income of Rs.30,15,000/- and Rs.4,21,38,038/- for the assessment years 2013-14 and

2014-15 respectively and filed an affidavit dated 04.07.2014 confirming the additional income over and above his regular income and promised to pay the taxes. During the course of survey, the following investments / expenditure made by the assessee was noticed.

S.No.	Description	Amount (Rs.)
1.	Advance to Sri Kothamasu Srinivas Rao	1,25,00,000
2.	Advance to Smt. Miriyala Srilakshmi	40,00,000
3.	Investment in M/s Viswanatha Constructions	47,48,276
4.	Advance to Arla Ranga Rao, Guntur	14,00,000
5.	Investment in Residential Building	10,00,000
6.	Unexplained expenditure in construction projects	1,84,89,762
	Total	4,21,38,038

3. The assessee filed the return of income for the assessment year 2014-15 on 29.11.2014 admitting total income of Rs.4,21,48,620/-. The return filed by the assessee was processed after following due procedure and the assessment was completed u/s 143(3) of the I.T.Act. On verification of the books of accounts and impounded material and information furnished by the assessee, it was noted that though the assessee admitted additional income of Rs.4,21,38,038/-, he had filed the return of income admitting income of Rs.4,21,48,620/- after considering all the heads of income. When the same is put to the assessee, he has filed a revised

statement with details of working of his income under various heads are reworked and assessment was completed as under :

Computation of Taxable Income		(Rs.)
I	Income from salary	1,25,000
II	Income from Business	12,78,967
III	Income from House Property	12,51,493
IV	Income from Long Term Capital Gains	28,44,029
V	Income from other sources	4,21,38,038
	Total income assessed	4,76,37,527
Less	Deduction under Chapter VIA :	1,56,432
	Taxable Income	4,74,81,095

Subsequently, the Assessing Officer (AO) has issued a notice u/s 274 r.w.s. 271(1)(c) of I.T.Act, 1961 dated 31.05.2016 to the assessee to show cause as to why the penalty should not be made u/s 271(1)(c) of the Act. In response to the notice issued by the AO, the assessee has filed a detailed reply on 10.06.2016. The AO after considering the explanation given by the assessee has imposed penalty of Rs.10,29,360/- u/s 271(1)(c) of the Act.

4. On being aggrieved, the assessee carried the matter before the Ld.CIT(A) and raised an addition ground of appeal that the notice issued by the AO to levy penalty u/s 271(1)(c) of I.T.Act, 1961 dated 31.05.2016 is not clear that whether the assessee concealed the particulars of income or furnished the inaccurate particulars of such income and the notice is

invalid. The Ld.CIT(A) after considering the explanation of the assessee and also by admitting the additional ground raised by the assessee has held that the notice issued by the AO dated 31.05.2016 is invalid and cancelled the penalty levied u/s 271(1)(c) of the Act.

5. On being aggrieved, the revenue carried the matter before the Tribunal. The Ld.DR strongly supported the order passed by the AO. On the other hand, the Ld. Counsel for the assessee placed reliance on the order passed by the Ld.CIT(A).

6. We have heard both the sides, perused the records and gone through the orders of the authorities below. The only issue for consideration before us is whether the Ld.CIT(A) is correct in admitting the additional ground raised by the assessee and cancelling the penalty levied by the AO. In this case, the AO has initiated the penalty proceedings by issuing notice dated 31.05.2016 and the assessee has filed a reply. After considering the reply, the penalty of Rs.10,29,360/- was levied on the ground that the assessee has concealed the income assessable to tax and also furnished inaccurate particulars of his income. The assessee had challenged the very same notice issued by the AO dated 31.05.2016 on the ground that the AO is not

clear as to whether the assessee concealed the particulars of income or furnished the inaccurate particulars of such income. Therefore, the notice issued by the AO cannot survive and the same has to be quashed. The Ld.CIT(A) after examining the notice issued by the AO dated 31.05.2016 and also by considering the Hon'ble Supreme Court judgement in the case of Manjunatha Cotton and Ginning Factory (242 Taxmann 180) and also Hon'ble jurisdictional High Court of Telangana and Andhra Pradesh in the case of Smt. Baisetty Revathi in ITTA No. 684 of 2016 dated 13.7.2017 has held that penalty proceedings are invalid for the reason that charge is not clear. For the sake of convenience, the relevant portion of the order is extracted 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 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. The appeal is accordingly dismissed"

Respectfully following the above decisions rendered by the jurisdiction High Court, having regards to the facts, the penalty proceedings initiated by the Assessing Officer is treated as invalid. Hence, the appellant succeeds on this ground."

The coordinate Bench of the Tribunal in the case of K Prasad Babu Vs. ACIT Circle, 4(1) in ITA No.177 of 2014 for the assessment year 2009-10 by order dated 01.11.2017 has considered the validity of the notice in similar facts and circumstances and the Tribunal by following the judgement of Hon'ble jurisdictional High Court of Telangana and Andhra Pradesh in the case of Smt. Baisetty Revathi (supra) has held that the notice is invalid. In the present case, the notice is not clear, whether the penalty is levied for concealment of income or for furnishing inaccurate particulars of income. We, therefore, respectfully following the judgement of the above jurisdiction High Court, we find no infirmity in the order of the Ld.CIT(A) and the ground of the revenue is dismissed.

7. In the result, appeal filed by the revenue is dismissed.

The above order was pronounced in the open court on 18th July, 2018.

Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH)	Sd/- (वी.दुर्गा राव) (V. DURGA RAO)
लेखा सदस्य/ ACCOUNTANT MEMBER	न्यायिक सदस्य/ JUDICIAL MEMBER
विशाखापटणम /Visakhapatnam	
दिनांक /Dated : 18.07.2018	
L.Rama, SPS	

आदेश कीप्रतिलि पिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- Sri Mittapalli Rajendra Babu, D.No.3-29-13, 4th Lane,Krishna Nagar, Guntur – 522 006
2. राजस्व/ The Revenue – The ACIT, Circle-2(1), Guntur
3. The Pr.Commissioner of Income Tax, Guntur
4. The Commissioner of Income Tax (Appeals)-1,Guntur
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM