

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 838/Hyd/2017
Assessment Year: 2011-12**

Income-tax Officer,
Ward – 3(1), Hyderabad.

vs. SCI IT Solutions Pvt. Ltd.,
Hyderabad.

PAN – AAACE 7864 M

(Appellant)

(Respondent)

Revenue by : Shri Sunku Srinivas
Assessee by : Shri P. Jitendra

Date of hearing : 01/08/2018
Date of pronouncement : 03/08/2018

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This appeal filed by the Revenue is directed against the order dated 03/02/2017 of CIT(A) – 3, Hyderabad for AY 2011-12 whereby he cancelled the levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act')

2. On perusal of record, we find that there is a delay of 5 days in filing this appeal. To this effect, the department filed a petition for condonation of the said delay, wherein, inter-alia, stated that due to administrative procedures, the delay occurred and the same may be condoned. Since there was a sufficient cause, we condone the delay and admit the appeal for hearing and adjudication.

3. Brief facts of the case are, the assessee company, engaged in software development and IT enabled services, filed its return of income for AY 2011-12 on 29/09/2011 admitting income of Rs.

2,97,885/- after claiming 10A deduction of Rs. 2,54,08,481/-. Income as per provisions of section 115JB was Rs. 2,55,05,537/-. AO passed order u/s 143(3) rws 263 on 29/06/2015 by disallowing 10A deduction of Rs. 2,54,08,483/- on the ground that assessee claimed such deduction for 11th year and the same is allowable only for 10 consequent years up to AY 2010-11. The disallowance made was accepted and no appeal was filed against order u/s 143(3)rws 263.

4. Thereafter, the AO initiated penalty proceeds u/s 271(1)(c) on the ground that the assessee furnished inaccurate particulars of its income and accordingly, levied penalty of Rs. 84,40,060/-.

5. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A).

6. Before the CIT(A), the assessee contended that the notice issued by the AO did not specify whether penalty proceedings were initiated for concealment of particulars or for furnishing of inaccurate particulars. He relied on the following cases:

1. Suvaprasanna Bhattacharya Vs. aCIT
2. Manjunatha Cotton & ginning Factory [2013] 359 ITR 565
3. CIT Vs. Rampur Engg. Co. Ltd., ITA No. 211/2006 (Delhi HC)

7. After considering the submissions of the assessee, the CIT(A) following the decision of Hon'ble Karnataka High Court in ITA No. 380 of 2015, deleted the penalty levied by the AO u/s 271(1)(c).

8. Aggrieved by the order of CIT(A), the revenue is in appeal before us.

9. Considered the rival submissions and perused the material on record. The issue in dispute is squarely covered by the decision of the Hon'ble Supreme Court in the case of CIT Vs. SSA's Emerald Meadows, [2016] 73 Taxmann.com 248 (SC) wherein the Apex Court

upheld the decision of the Hon'ble High Court, in which, the Hon'ble High Court confirmed the order of the Tribunal and dismissed the appeal of the revenue, who came in appeal against the order of the Tribunal. The Tribunal relying on a decision of Karnataka High Court in case of CIT Vs. Manjunatha Cotton & Ginning Factory, [2013] 359 ITR 565/210 allowed the appeal of the assessee holding that notice issued by Assessing Officer u/s 274 read with section 271(1)(c) was bad in law, as it did not specify under which limb of section 271(1)(c) penalty proceedings had been initiated, i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars of income.

9.1 Therefore, we do not find any infirmity in the order of the CIT(A) in cancelling the penalty levied u/s 271(1)(c) of the Act on the ground that the AO did not specify under which limb of section 271(1)(c) penalty proceedings had been initiated, i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars of income. Accordingly, the order of CIT(A) is hereby upheld and the grounds raised by the revenue are dismissed.

10. In the result appeal of the revenue is dismissed.

Pronounced in the open Court on 3rd August, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 3rd August, 2018

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Copy to:-

- 1) ITO, Ward – 3(1), 7th Floor, Signature Towers, Kondapur, Hyderabad.
- 2) M/s SC IT solutions Pvt. Ltd., Plot No. 16, Krithika Layout, Madhapur, Hyderabad – 500 081.
- 3) CIT(A) – 3, Hyderabad.
- 4) Pr. CIT – 3, Hyd.
- 5) The Departmental Representative, I.T.A.T., Hyderabad.
- 6) Guard File