

**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. 600/Hyd/2015  
Assessment Year: 2008-09

Tulip Granites Pvt. Ltd., vs. Dy. Commissioner of  
Hyderabad. Income-tax, Circle – 2(3),  
Hyderabad.

PAN – AABCT 7314E

Appellant

Respondent

Assessee by: Shri S. Rama Rao  
Revenue by: Shri Sunku Srinivasulu

Date of hearing: 10/10/2018  
Date of pronouncement: 09/11/2018

**ORDER**

**PER S. RIFAUR RAHMAN, AM:**

This appeal is filed by the assessee against order of CIT(A) - 2, Hyderabad, dated 19<sup>th</sup> February, 2015 for AY 2008-09.

2. Brief facts of the case are that the assessee-company filed Return of Income for the Asst. Year 2008-09, on 30.09.2008, declaring an income of Rs.32,14,348/- after claiming deduction u/s.10B of the Act of Rs.1,35,34,288/-. The assessment was completed u/s.143(3) on 30.11.2010, determining the total income at Rs.1,54,66,490/-, after making various disallowance/additions to the income admitted, which includes the deduction/restriction of u/s.10B of the I.T. Act. The reasons for this deduction/restriction were discussed by the AO as under:

2.1 The assessee was in the business of processing of granite. The assessee company has set up a hundred per cent export oriented undertaking located at Sy. No. 345,358/1, Marudhandapally(V), Near Soolagiri, Hossur Taluka, Krishnagiri district, Tamil Nadu and registered as EOU in Madras Export Processing Zone and claimed deduction u/s.10B of Income tax Act, 1961.

2.2 During the course of assessment proceedings, the AO observed that the assessee has claimed an amount of Rs. 1,35,34,288/- as exemption u/s.10B of the Income Tax Act, 1961. On perusal of Form 56G (report under section 10B of the I.T Act, 1961) against column no.18 (i.e. remarks if any) it was mentioned that the undertaking has received an amount of Rs. 23,97,49,461/- as sale proceeds of third party exports in the form of Indian Currency, which is fundamentally against the provisions of section 10B(3) of the Income Tax Act, 1961. In this connection, the assessee was asked to show cause as to why deduction u/s.10B should not be disallowed as it has mentioned that the undertaking received an amount of Rs. 23,97,49,461/- as sale proceeds of third party exports in the form of Indian Currency. Further the assessee was also asked that the said claim is against the explanation (2)(ii) to Section 10B of the Income Tax Act, which defines convertible foreign exchange.

2.3 In response, assessee stated that he is having exports other than third party exports also. In this regard, the assessee was asked to show proofs for remittances in foreign currency to the extent it is claiming them to be export sales. It is clearly brought to the notice of the assessee that the entire third party export sale will not be allowed as exemption u/s.10B of the Income Tax Act, 1961, in response to which the

assessee has admitted that he is not receiving any inward remittance in foreign currency corresponding to third party exports. In view of the above observations, the AO held that the exemption claimed u/s.10B of the Income Tax Act, 1961, was not allowed in respect of third party exports of Rs.23,97,49,461/- and the same were reduced from the total turnover and exemption u/s.10B was recomputed accordingly.

2.4 When the assessee preferred an appeal before the CIT(A) as well before the ITAT, he upheld the action of AO.

3. Later, the AO initiated penalty proceedings u/s 271(1)(c) of the Act on the ground that the assessee company has deliberately claimed deduction u/s 10B on the third party exports though it has not received any inward remittances in foreign currency with a sole intention to reduce the taxable income and pay less tax and hence, it is clear case of under reporting of income by making a false claim by furnishing inaccurate particulars/wrong statement. Accordingly, he levied a penalty of Rs. 36,39,432/- u/s 271(1)(c) of the Act.

4. Aggrieved by the penalty order, the assessee preferred an appeal before the CIT(A), who confirmed the penalty order.

5. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

*1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.*

*2. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in holding that there is any concealment of income particularly when the claim made for exemption u/s 10B of the I.T. Act is rejected. The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that there was no concealment of income nor furnishing*

*of any inaccurate particulars of income attracting the provisions of Sec.271(1)(c) of the I.T. Act.*

*3. The learned Commissioner of Income-Tax (Appeals) erred in confirming levy of penalty u/s 271(1)(c) of Rs.36,39,432/-. The learned Commissioner of Income-Tax (Appeals) ought to have considered the detailed explanations filed before him and the legal pronouncements in the matter and cancelled the penalty levied.*

*4. Any other ground that may be urged at the time of hearing.”*

5.1 The assessee filed a petition for admission of the following ground of appeal, on the ground that the assessee inadvertently omitted to raise a formal ground to this effect while filing of appeal before the ITAT and the issue involved is a legal issue, the ground may be admitted for adjudication:

*“The initiation of proceedings u/s 271(1)(c) of the Act is not valid as the AO did not strike off the inappropriate portion of the notice. The AO ought to have struck off the inappropriate portion and indicated to the assessee the applicable portion in the notice”*

6. As the said additional grounds are legal grounds, wherein, the facts are on record and facts do not require fresh investigation, following the decision of Hon'ble Supreme Court in the case of National Thermal Power Co., Limited Vs. CIT 229 ITR 383 (SC), we admit the said additional ground of assessee.

7. The Id. 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 30.11.2010. 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.

8. The Learned Departmental Representative on the other hand relied on the orders of revenue authorities.

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 In the case under consideration, on perusal of the show cause notices issued by the Assessing Officer u/s 274 r.w.s. 271 of the IT Act, 1961, dated 30/11/2010, which is placed on record, it is seen that the Assessing Officer did not mention whether the notice is issued for concealment of income or for furnishing of inaccurate particulars of income. Therefore, as per the ratio laid down by the Hon'ble Supreme Court in the case of SSA's Emerald Meadows, the notice issued by the Assessing Officer is not valid and consequently, the order passed u/s 271(1)(c) is also not valid. Hence, we set aside the order of the CIT(A) and quash the order passed by the

Assessing Officer u/s 271(1)(c) of the Act. Accordingly, the appeal of the assessee is allowed.

10. In the result, appeal of the assessee is allowed.

Pronounced in the open court on 9<sup>th</sup> November, 2018.

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Hyderabad, dated 9<sup>th</sup> November, 2018

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Copy forwarded to:

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Flat No. 102, Shriya's Elegance, 3-6-643, Street No. 9,  
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- 2) DCIT, Circle – 2(3), Income-tax Towers, AC Guards, Hyd.
- 3) CIT(A) – 2, Hyd.
- 4) Pr. CIT – 2, Hyd.
- 5) The Departmental Representative, I.T.A.T., Hyderabad.
- 6) Guard File