

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH 'A', HYDERABAD**

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

ITA No. 1580/Hyd/2017  
Assessment Year: 2004-05

Shyamsunder Sharma, Hyderabad.  PAN – AGQPS2391 J	vs.	Asst. Commissioner of Income-tax, Central Circle – 2, Hyderabad.
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Appellant

Respondent

Assessee by: Shri S. Rama Rao  
Revenue by: Shri R.S. Arvindakshan

Date of hearing: 01/11/2018  
Date of pronouncement: 09/11/2018

**ORDER**

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

This appeal is filed by the assessee against order of CIT(A) - 9, Hyderabad, dated 29<sup>th</sup> May, 2017 for AY 2004-05.

2. Brief facts of the case are that the AO passed an assessment order u/s 143(3) r.w.s. 153A for the AY 2004-05 on 24/12/2009 determining the income of the assessee at Rs. 6,11,100/- as against the returned income of Rs. 2,80,098/-.

2.1 The AO noted that the assessee had shown an amount of Rs. 2,31,000/- as hand loans received from various persons. Since the assessee could not prove the source of receipt, the AO treated the said loan as unexplained cash credit u/s 68 of the Act.

2.2 When the assessee preferred an appeal before the CIT(A), the CIT(A) confirmed the action of AO observing that

the assessee has not been able to file satisfactory explanation in respect of the loans/deposits obtained by the assessee.

3. Thereafter, as the assessee failed to offer a valid explanation for his claim of an amount of Rs. 2,31,000/- of loans obtained by the assessee, the AO initiated penalty proceedings u/s 271(1)(c) on the grounds that the assessee has concealed the particulars of income and levied a minimum penalty of Rs. 69,300/- 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 of AO.

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) ought to have considered the fact that the Assessing Officer did not strike off the inappropriate portion in the notice u/s 274 of the I.T. Act and, therefore, the notice dated 24.12.2009 issued for the assessment year 2004-05 and the order passed consequent to the said notice are invalid.*

*3) The learned Commissioner of Income Tax (Appeals) erred in holding that there is any concealment of income or furnishing of inaccurate particulars of income.*

*4) The learned Commissioner of Income Tax (Appeals) ought to have seen that the addition was made disbelieving the evidences submitted.*

*5) The learned Commissioner of Income Tax (Appeals) erred in confirming the penalty of Rs.69,300/- u/s 271(1) (c) of the I.T. Act.*

*6) Any other ground or grounds that may be urged at the time of hearing.”*

6. Referring to the grounds of appeal, 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 24.12.2009. 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. In this connection, he relied on the decision of the coordinate bench of this Tribunal in assessee's own case for AYs 2005-06 & 2007-08 in ITA Nos. 1459 & 1460/Hyd/2016, dated 09/08/2017, a copy of which is on record.

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

8. Considered the rival submissions and perused the material facts 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.

8.1 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 24/12/2009, which is placed on record vide page No. 8 of paper book, 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.

9. 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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- 2) *ACIT, Central Circle – 2, Ayakar Bhavan, Basheerbagh, Hyd.*
- 3) *CIT(A) – 9, Hyd.*
- 4) *Pr. CIT (Central) Hyd.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*