

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.383/Viz/2018
(निर्धारण वर्ष/ Assessment Year: 2012-2013)

ACIT, Circle-3(1)
Visakhapatnam

Vs. Shri Meka Kasi Visweswarudu
Rowe & Pal
Chartered Accountants
D.No.14-36-1, Krishna Nagar
Visakhapatnam
[PAN : ABVPM2320H]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Smt Suman Malik, DR
प्रत्यर्थी की ओर से/ Respondent by : Shri Y Anil Kumar, AR

सुनवाई की तारीख / Date of Hearing : 14.11.2018

घोषणा की तारीख/Date of Pronouncement : 16.11.2018

आदेश / ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the revenue against the order of the Commissioner of Income Tax(Appeals) [CIT(A)], Visakhapatnam vide I.T.A.No.0177/2015-16/ITO-W-1, VZM/2017-18 dated 20.04.2018 for the assessment year 2012-13.

2. In this case, the assessee filed return of income on 31.03.2014 admitting total income of Rs.2,48,000/- after claiming deduction under Chapter VIA of the Income Tax Act, 1961 (hereinafter called as 'Act'). Subsequently, the assessment was completed u/s 143(3) on total income of Rs.1,18,37,382/- and the AO initiated penalty u/s 271(1)(c) amounting to Rs.23,17,876/-.

3. Against the penalty order u/s 271(1)(c), the assessee filed appeal before the CIT(A) and raised the ground with regard to the defect in the notice issued by the AO u/s 271(1)(c). The assessee submitted before the Ld.CIT(A) that the AO did not explicitly specify in the penalty notice as to whether the penalty proceedings were initiated for furnishing inaccurate particulars of income or for concealment of income. The Ld.CIT(A) cancelled the penalty placing reliance on the decision of Hon'ble Jurisdictional High Court of Telangana and A.P. in the case of Pr.CIT Vs. Baisetty Revathi in ITTA 684/2016 in 30.07.2017.

4. Aggrieved by the order of the Ld.CIT(A), the revenue is in appeal before this Tribunal.

5. We have heard both the parties and perused the material placed on record. In the instant case, there is no dispute that the AO has issued the notice u/s 271(1)(c) without striking irrelevant columns to specify whether the penalty was initiated for furnishing inaccurate particulars of income or for concealment of income. The Hon'ble Jurisdictional High Court held that non specifying the issue with regard to furnishing the inaccurate particulars of income or concealment of income, renders the notice invalid. The Ld.CIT(A) followed the order of this Tribunal in the case of Konchada Sreeram in I.T.A. No.388/Viz/2015 while cancelling the penalty. For ready reference, we extract relevant part of the order of the Ld.CIT(A) in page No.6 to 6.3. which reads as under :

6. I have considered the submissions made and also gone through the information furnished during appeal proceedings The AO initiated the penalty proceedings as the assessee failed to furnish the sources for the investment made. The penalty notice issued by the AO reads as under :

Whereas in the course of proceeding before me for the Asst. Year 2012-13 it appears to me that you have concealed the particulars of your income or furnished inaccurate particulars of such income

6.1. From the notice issued, its seen that AO issued notice for concealment of income or for furnishing of inaccurate particulars, which proves that the assessing officer was not sure of which of the offence he sought the explanation. in this regard, it is relevant to refer to the decision rendered by the Hon'ble Jurisdictional High Court in the case of Smt.Baisetty Revathi wherein the Hon'ble Court has held as under:

On principle, which 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 defense. 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 satisfied 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.

6.2. On the similar facts, the Hon'ble ITAT, Visakhapatnam in the case of Konchada Sreeram (ITA No.388/Viz/2015) following the decision of the Hon'ble Andhra Pradesh High Court cited supra and its own decision in the cases of Narayana Reddy Enterprises (229/Viz/2015) and Smt.Makina Annapurna (ITA Nos.604 & 605/Vizag/2014) held that non-striking of the irrelevant column renders the notice issued u/s 271 as invalid.

6.3. Respectfully following the decision cited supra, it is held that the notice issued u/s 271 is invalid and consequent penalty imposed by the AO is cancelled."

6. Since the Ld.CIT(A) has followed the order of this Tribunal and the decision of Hon'ble Jurisdictional High Court, we do not find any reason to interfere with the order of the Ld.CIT(A) and the same is upheld.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 16th November, 2018.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER** लेखा सदस्य/**ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 16.11.2018

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

न्यायिक सदस्य/**JUDICIAL MEMBER** लेखा सदस्य/**ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 16.11.2018

L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant –ACIT, Circle-3(1), Visakhapatnam
2. प्रत्यार्थी / The Respondent– Shri Meka Kasi Visweswarudu Rowe &Pal Chartered Accountants, D.No.14-36-1, Krishna Nagar, Visakhapatnam
3. The Pr.Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income Tax (Appeals), Visakhapatnam
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM