

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' SMC Bench, Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

ITA Nos. 437/Hyd/2018
(Assessment Year: 2013-14)

Shri Cheeti Laxman Rao Vs Income Tax Officer
Secunderabad Ward 15(1)
PAN;AEAPC7046Q Hyderabad
(Appellant) (Respondent)

For Assessee : Shri T. Chaitanya Kumar
For Revenue : Shri D.J.Prabhakar Anand

Date of Hearing: 13.03.2019
Date of Pronouncement: 15.03.2019

ORDER

This is assessee's appeal for the A.Y 2013-14 against the order of the CIT (A)-7, Hyderabad, dated 28.11.2017 confirming the penalty levied by the AO u/s 271A of the Act.

2. The AO initiated the penalty u/s 271A since in the assessment order u/s 143(3) of the Act, the gross receipts had been arrived at Rs.1,72,87,696/- and since it exceeded Rs.1.00 crore, the assessee was required to maintain the books u/s 44AB of the Act and the assessee has failed to do so. Since the assessee failed to appear and show cause as to why the penalty should not be levied, the AO levied the penalty of Rs.25,000/- u/s 271A of the Act. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of penalty and the assessee is in second appeal before this Tribunal.

3. The learned Counsel for the assessee submitted that the addition to the gross receipts has been made by the AO on the ground that the cash credits made into the Bank A/c have not been explained by the assessee. He argued that the Bank A/c cannot be treated as books of account of the assessee. He submitted that the gross receipts of the assessee were less than Rs.1.00 crore and therefore, he was not required to maintain any books of account. Therefore, he prayed for deletion of the penalty u/s 271A of the Act.

4. The learned DR, however, supported the orders of the authorities below.

5. Having regards to the facts of the case, I find that according to the assessee his gross receipts were less than Rs.1.00 crore and therefore, he need not have maintained the books of account. The gross receipts have exceeded Rs.1.00 crore only because of treating the unexplained cash credits also as turnover of the assessee. The AO has made the addition to the turnover because the assessee could not explain the cash credits but there is no positive evidence that all these deposits are the business receipts of the assessee. Therefore, by virtue of increase in the turnover due to the assessment order, the assessee cannot be expected to have maintained books of account u/s 44AB of the Act. Therefore, I am satisfied that the penalty u/s 271A is not leviable in this case. The appeal of the assessee is accordingly allowed.

6. In the result, appeal filed by the assessee is accordingly allowed.

Order pronounced in the Open Court on 15th March, 2019.

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 15th March, 2019.

Vinodan/sps

Copy to:

- 1 Shri T. Chaitanya Kumar, Advocate, Flat No.102, Gowri Apartments, Udru Lane, Himayatnagar, Hyderabad
- 2 ITO Ward 15(1) Hyderabad
- 3 CIT (A)-7 Hyderabad
- 4 Pr. CIT – 7 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order