



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.97/CTK/2019
Assessment Year: 2009-10

Natabar Nath, Gandhi Nagar, Po/Dist: Koraput.	Vs.	ITO, Jeypore Ward, Jeypore
PAN/GIR No.ACLPN 1721		
(Appellant)	..	(Respondent)

Assessee by : Shri P.K.Mishra, Adv
Revenue by : Shri Subhendu Dutta, DR

Date of Hearing : 05/04/ 2019
Date of Pronouncement : 05 /04/ 2019

ORDER

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax(Appeals)-1, Bhubaneswar dated 25.1.2019 for the assessment year 2009-10.

2. The only issue raised in this appeal is against the order of the CIT(A) confirming levy of penalty of Rs.2,31,130/- under section.271(1)(c) of the Act by the Assessing Officer in respect to addition of bogus sundry creditors of Rs.5,94,651/- and on the addition of agricultural income as income from other sources of Rs.92,300/- and on addition of accrued interest on FD's of Rs.34,400/-

3. At the outset, Id Counsel for the assessee first of all took me to the assessment order and stated that the initiation of penalty proceedings by the Assessing Officer was for furnishing of inaccurate particulars of income and also for concealment of particulars of income. Ld Counsel referred to the followings as noted by the Assessing Officer in the assessment order:

“Initiated Penalty proceedings under section.271(1)(c) of the I.T.Act 1961 separately”

4. Ld Counsel took me through the penalty order dated 28.11.2017 under section.271(1)(c) read with section. 274 of the Act, wherein, the Assessing Officer has not recorded his satisfaction. Therefore, the penalty proceedings is without jurisdiction. Ld counsel for the assessee relied on the decision of Hon’ble A.P.High Court in the case of V.V.Projects and Investments Pvt Ltd., 300 ITR 40(AP).

5. When these facts were pointed out by this Bench to Id Departmental Representative, he only relied on the assessment order, penalty order and the order of the CIT(A).

6. I have heard the rival contentions and gone through the facts and circumstances of the case. Admittedly, as noticed from the assessment order, I find that no such satisfaction as contemplated u/s.271(1)(c) have been recorded by the Assessing Officer while completing the assessment that in which limbs, the issue is following. The Assessing Officer has simply mentioned that “penalty proceedings u/s.271(1)(c) are initiated separately”. I find that Hon’ble A.P. High Court in the case of V.V.Projects and Investments Pvt Ltd (supra) has held as under:



" The Assessing Officer has to form his own opinion and record his satisfaction of concealment of income or furnishing of inaccurate particulars of income before initiating penalty proceedings u/s.271(1)(c) of the I.T.Act, 1961. It is also clear that such satisfaction of the AO must be spelt out in the order of assessment itself and cannot be assumed from the issue of a notice u/s.271(1)(c) of the Act. Failure to record such satisfaction amounts to a jurisdictional defect which cannot be cured. It is also relevant to note that whether the assessee has concealed his income or has deliberately furnished inaccurate particulars thereof is essentially a finding of fact which has to be spelt out by way of recording the satisfaction of the AO as required u/s.271(1)(c) of the Act. Therefore, in the absence of such a finding in the assessment order no penalty proceedings can be initiated."

Respectfully following the decision of Hon'ble A.P. High Court in the case of V.V. Project and Investments P Ltd (supra) , I delete the penalty of Rs.2,31,130/- levied by the Assessing Officer under section.271(1)(c) of the Act and allow the appeal of the assessee.

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

Order pronounced on 05/04/2019.

Sd/-

(Chandra Mohan Garg)
JUDICIALMEMBER

Cuttack; Dated 05 /04/209

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The appellant : Suna Nath, Gandhi Nagar, Po/Dist: Koraput.
 2. The respondent : ITO, Jeypore Ward, Jeypore
 3. The CIT(A)-
 4. Pr.CIT- Cuttack
 5. DR, ITAT, Cuttack
 6. Guard file.
- //True Copy//

By order

Sr. Pvt. Secretary,
ITAT, Cuttack