

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES “SMC” BENCH: HYDERABAD

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

ITA. No.1337/Hyd/2018  
Assessment Year: 2009-10

P. Janga Reddy, Hyderabad. PAN: AHOPP 4343 E (Appellant)	vs.	ITO, Ward-9(4), Hyderabad. (Respondent)
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For Assessee:	Sri M. Chandramouleswara Rao
For Revenue :	Smt. Neeju Gupta, DR

Date of Hearing :	15/05/2019
Date of Pronouncement :	24/05/2019

**ORDER**

**PER V. DURGA RAO, JM.**

This appeal is filed by the assessee against the order of the CIT(A)-7, Hyderabad dated 24/4/2018 for the assessment year 2009-10. In this appeal, the assessee has raised the following grounds of appeal:-

- “1. *The appellate order of the Ld. CIT(A) is erroneous and bad both on facts and in law.*
2. *On the facts and in the circumstances in the case, the Ld Commissioner has erred in confirming the concealment penalty imposed ignoring the fact that the appellant has not concealed any income and agreed for estimation of income from his spare parts business by the CIT(A) whereas in fact, the appellant has not made any surplus in such business.*
3. *On the facts and in the circumstances in the case, the Ld. Commissioner has erred in confirming the levy of concealment penalty in a case where the Assessing Officer after due investigation has found the appellant’s claims of business in spare parts as true and correct and where the Assessing Officer further followed the agreed profit estimation rate decided by the first appellate commissioner of income tax. He ought to have considered the fact that the appellant’s claim was found to be true*

*and correct and no new facts were brought on record by the A.O. while will contradict the claim of the appellant.*

4. *such other ground and grounds that may be urged during the hearing of the appeal.”*

2. Brief facts of the case are that the assessee is an individual filed the return of income declaring total income of Rs. 10,96,760/-. The case was selected for scrutiny and after due process, assessment was completed u/s 144 of the Act on 24/12/2010 by making an addition of Rs. 23,40,000/- as unexplained investment u/s 69 of the Act with regard to cash deposits in Savings Bank Account. On appeal before the CIT(A), it was submitted that the assessee was carrying on spare parts business and an amount of Rs. 21,12,500/- is the business income and Rs. 2,27,500/- is income from agriculture. CIT(A) after considering the explanation of the assessee he directed the A.O. to delete the addition in respect of agricultural income of Rs. 2,27,500/- and he further directed the A.O. to estimate the profit @ 25% on the business income of Rs. 21,12,500/-. The Department carried the matter in appeal before the ITAT and submitted that the assessee has not filed any evidence in respect of business carried on by the assessee and therefore, the order passed by the CIT(A) is not correct. The Tribunal by considering the submissions made by the Department, set-aside the order passed by CIT(A) and directed the A.O. to decide the appeal denovo in accordance with law. The Assessing Officer consequent to the directions given by the ITAT passed assessment order u/s 144 r.w.s 254

of the Act dated 09/08/2016. In the assessment order, A.O. observed that after conducting the detailed enquiries it is established that the assessee has carried spare part business and by considering the nature of the business and also based on the findings of the CIT(A), A.O. assessed 25% of the gross receipts of Rs. 21,12,500/- as the income of the assessee and so far as the agricultural income is concerned, A.O. accepted the explanation of the assessee and considered the same as agricultural income. Subsequently, the A.O. has initiated penalty proceedings u/s 271(1)(c) of the Act amounting to Rs. 1,79,510/-. In the penalty order, the A.O. has noted as under:

- "3. *In pursuance to the IT AT order, notices u/s 143(2) dated 26/04/2016 and 06/06/2016 were issued and Assessee's AR Sri D.Ramakrishna Reddy appeared and filed information on 29/07/2016. It was submitted that the assessee was in spare parts business and furnished confirmation letters from the parties from whom assessee purchased spare parts. At the same time he expressed his inability to get the details of buyers who have purchased spare parts from him. In order to verify the genuinity of the claim of spare parts business, enquiries were caused. Enquiries conducted have established that assessee has done rig spare parts business. Considering the nature of the business and findings of the CIT(A) profit on Rs.21,12,500/- amount @ 25% is treated as income from business. Out of the total cash deposits of RS.23,40,000/-, the amount of RS.21,12,500/- is treated as gross receipts from the business in rig spare parts and RS.2,27,500/- as net agricultural income.*
4. *Thus it is clear that the assessee has not reflected his true business affairs in return of income filed for the A. Y 2009-10. After considering the material available on record, I am satisfied that the assessee has concealed the true income particulars. Notice u/s 271(1)(c) of the Income Tax Act dated 09/08/2016 was issued asking the assessee to appear on 24/08/2016 and show cause why an order imposing penalty should not be made u/s 271(1)(c). In response to the notice, the AR of the assessee, Sri D. Ramakrishna Reddy appeared on 24/08/2016 and submitted that since the Income is estimated, penalty may be dropped. Though the bank deposits were treated as "business receipts" and income was estimated, the income was not shown in the return of income. Only during the appellate proceedings he made submission that he did spare part business and cash deposits in bank are sourced from the spare parts business. Hence it is treated that the assessee has suppressed the very source of his income and has also concealed the true particulars of his income."*

3. On appeal, the CIT(A) confirmed the order of the A.O by observing as under:

"6. *I have considered the findings of the Assessing Officer in assessment order. and the submissions of the assessee carefully. The Assessing Officer levied penalty holding that the appellant has concealed income of Rs.5,28,125/- being the business "income from spare parts business which was not shown in the return of income filed. The Assessing Officer found that cash deposits in the savings bank account represent the turnover carried out in the spare parts. business. The addition made by the Assessing Officer @25% was accepted by the appellant agreeing with an amount of Rs.21,12,500/- as gross receipts from spare parts business. No appeal was filed against order ujs.143(3) rws 254, dated 9-8-2016. Since the cash deposits in the savings bank account representing the sales j turnover of the spare parts business to the appellant was not declared in the return of income filed originally, the finding of the Assessing Officer that the appellant has concealed the income is correct. The ratio of the decisions cited by the appellant are not applicable to the facts of the case. The fact of the present case is entirely on the premise that the appellant has not declared any income from the spare parts business in the return of income filed originally. The cases cited by the AR of the appellant was on premise that higher income was estimated than the income shown by the assessee in the return of income. In that case, there was only a case of higher estimation of income than the returned income from the business income which was already declared. In the present case, no such business income was declared by the appellant in the return of income filed. Therefore, I confirm the penalty levied by the Assessing Officer."*

4. On being aggrieved, assessee carried the matter in appeal before the Tribunal.

5. Learned Counsel for the Assessee has submitted that the only addition made by the A.O. in this case is estimation of 25% of the gross receipts and therefore, penalty cannot be levied.

6. On the other hand, Ld DR strongly supported the orders of the Lower Authorities and submitted that it is not a case of estimation and the penalty may be confirmed.

7. I have heard the rival submissions, perused the orders of the lower authorities as well as the material on record. In this case, the assessee has filed the return of income by declaring total income of Rs. 10,96,760/- and the case was selected for scrutiny and the assessment was completed u/s 144 of the Act on 24/12/2010 by making an addition of Rs.23,40,000/- s unexplained investment u/s 69 of the Act with regard to cash deposits in savings bank account. On appeal before the CIT(A), the assessee has submitted that he is carrying spare part business and his gross receipts are Rs. 21,12,500/-. The CIT(A) by considering the explanation of the assessee, accepted the agricultural income and directed the A.O. to delete the same and also accepted that the assessee is carrying on the business of spare parts and directed the A.O. to estimate 25% on the gross receipts. Revenue carried the matter in appeal before the ITAT against the said decision of the CIT(A) and the Tribunal directed the A.O. to pass assessment order denovo. Consequent to the Tribunal's order, A.O. after a detailed enquiry came to a conclusion that the assessee is carrying on spare parts business and by consider the entire facts of the case he has estimated the income of the assessee @ 25% of gross receipts of Rs. 21,12,500/-. Assessee accepted the same and no appeal is filed. Subsequently, A.O. has initiated penalty proceedings on the ground that that the assessee has not declared the income from business which the assessee has not submitted before the CIT(A) and even subsequently also no appeal is

filed against the order passed by the A.O. It is a fact that the assessee has not initially offered business income before the CIT(A). He has made a detailed submissions before the CIT(A) and after considering the same, the deposits made by the assessee in the bank account considered as business receipts and the CIT(A) directed the A.O. to estimate 25% of the gross receipts as income of the assessee. Even after ITAT set-aside the order of the CIT(A), the A.O. made a detailed enquiry and find that the assessee is carrying on business of ring spare parts and estimated the income of the assessee. Under these circumstances of the case, I am of the opinion that it cannot be said that the assessee has concealed the income. Assessee has accepted the addition made by the A.O. and accordingly taxes are being paid. Therefore, the order passed by the CIT(A) cannot survive and therefore I cancel the order passed by the CIT(A) and allow the grounds raised by the assessee.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 24<sup>th</sup> May, 2019.

Sd/-

**(V. DURGA RAO)**  
**JUDICIAL MEMBER**

Hyderabad, Dated: 24<sup>th</sup> May, 2019.

OKK, Sr.PS

Copy to

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2.	Income Tax Officer, Ward-9(4), Hyderabad.
3.	CIT (A)-7, Hyderabad.
4.	Pr. CIT-7, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File