

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

**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.255/Viz/2019
(निर्धारण वर्ष/Assessment Year : 2012-13)**

Shri Venkateswara Vaddera
Coolie Sangam
D.No.6A-13-6, Ponangi Road
Southern Street
Eluru

Vs. Income Tax Officer
Ward-1
Eluru

[PAN :AACT54370F]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri C.Subrahmanyam, AR
: Shri P.Srinivasa Murthy, DR

सुनवाई की तारीख / Date of Hearing

: 16.07.2019

घोषणा की तारीख/Date of Pronouncement

: 19.07.2019

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-11, Hyderabad vide Appeal No.210/2017-18/CIT(A)-11/Hyd dated 28.02.2019 passed u/s

271(1)(c) of the Income Tax Act, 1961 (in short 'Act') for the Assessment Year (A.Y.) 2012-13.

2. Brief facts of the case are that the assessee e-filed its return of income declaring total income of Rs.3,28,810/- for the A.Y.2012-13 on 29.09.2012. The assessment was completed u/s 143(3) on total income of Rs.9,11,516/- and the AO has initiated penalty u/s 271(1)(c) by issue of notice dated 03.06.2015 and levied the penalty of Rs.1,13,900/- u/s 271(1)(c) of the Act.

3. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee and confirmed the penalty imposed by the AO.

4. Against the order of the Ld.CIT(A), the assessee filed appeal before this Tribunal and raised five grounds of appeal along with appeal memo in Form No.36. Subsequently the assessee filed petition for admission of additional ground which reads as under :

“The penalty notice issued u/s 271(1)(c) of the I.T.Act does not contain the ground on which the penalty was imposed, therefore, such notice has no legal sanctity, hence, the penalty imposed cannot stand the test of judicial scrutiny.

4.1. During the appeal hearing, the Ld.AR argued that the additional ground is necessary since it goes to the root of the penalty imposed u/s 271(1)(c) of the Act. The ground could not be raised before the Ld.CIT(A) due to inadvertence. The additional ground is purely legal issue and no verification of fact or enquiry or investigation is involved, therefore, requested to admit the additional ground.

5. On the other hand, Ld.DR opposed for admission of additional ground.

6. We have considered the submissions of both the parties and of the considered opinion that the additional ground does not involve verification of any fact or investigation. It has impact on initiation of penalty u/s 271(1)(c), therefore, the additional ground raised by the assessee is admitted.

7. During the appeal hearing, Ld.AR argued that the AO did not specify in the notice for which act of offence, the penalty was proposed to be levied whether it is for concealment of income or for furnishing inaccurate particulars? Therefore, argued that the order passed u/s 271(1)(c) cannot

survive and required to be quashed.

8. On the other hand, the Ld.DR supported the orders of the lower authorities and argued that the Hon'ble High Court of Andhra Pradesh in the case of Commissioner of Income Tax Vs. Chandulal 152 ITR 238 (AP) upheld the notice issued without striking the irrelevant column in the notice and the said judgement of the Hon'ble High Court of Andhra Pradesh was not considered in the recent judgement of Smt.Baisetty Revathi, therefore, argued that mere non striking of the irrelevant column does not render the notice invalid. Hence argued that the notice issued u/s 271(1)(c) even without striking irrelevant column does not render the proceedings invalid. Hence requested to confirm the order of the Ld.CIT(A).

9. On the other hand, the Ld.AR relied on the order of the Tribunal in the case of Konchada Sreeram vide I.T.A. No.388/Viz/2015 dated 06.10.2017 and argued that it is covered case, hence requested to allow the appeal of the assessee.

10. We have heard both the parties and perused the material placed on record. There is no dispute that the notice issued by the AO is defective in

as much as non striking of irrelevant column is concerned. i.e. for which act of the assessee AO sought explanation whether it is for concealment of income or for furnishing of inaccurate particulars. The Ld.DR relied on the decision of Commissioner of Income Tax Vs. Chandulal cited supra. However, in the recent judgement of Hon'ble High Court of Andhra Pradesh in I.T.T.A.No.684/2016 in Principal CIT-1 Vs. Smt.Baisetty Revathy, held that non striking of irrelevant column renders the notice invalid. This Tribunal has followed the order of the Hon'ble jurisdictional High Court and decided the issue in favour of the assessee in the case of Konchada Sreeram vide I.T.A. No.388/Viz/2018 dated 06.10.2017. For the sake of clarity and convenience we extract relevant part of the order of this Tribunal which reads as under :

6. *We have heard both the parties and perused the material placed on record. In this case, the assessee has not filed the return of income. The department has conducted the survey u/s 133A and completed the assessment u/s 143(3) on total income of Rs.15,43,041/- and initiated penalty proceedings u/s 271(1)(c). The fact is that long term capital gains for sale of the property have come to the notice of the assessing officer because of the efforts made by the department. Therefore, the AO has initiated the penalty proceedings u/s 271(1)(c) and issued show cause notice in the printed proforma of penalty. The AO has issued the penalty notice which reads as under :*

"WHEREAS in the course of the proceeding before me for the .Asst. Year 2007-08 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 by the AO, it is observed that the assessing officer had issued the notice for concealment of income or for furnishing of inaccurate particulars. As per the notice, the assessing officer was not sure of which limb of the offence he sought the explanation from the assessee, whether it was for the concealment of income or for furnishing of inaccurate particulars. As per the decision of the Hon'ble Jurisdictional High Court cited, for starting the penalty proceedings, the condition precedent is that the assessing officer must be satisfied that a person has either concealed the particulars of his income or furnished inaccurate particulars of such income. The person who is accused of the conditions mentioned in Section 271 should be made aware of the grounds on which imposition of penalty is proposed as he has a right to contest such proceedings and should have the full opportunity to meet the case of the revenue so as to show that the conditions stipulated in Section 271(1)(c) do not exist and that he is not liable to pay the penalty. The Hon'ble High Court of Karnataka in the case law cited held that the practice of the revenue in sending the printed form where all the grounds mentioned in 271(1)(c) are mentioned would not satisfy the requirement of law when the consequence of the assessee not rebutting the initial presumption is serious in nature and has to pay the penalty ranging from 100% to 300% of the tax liability. As the provisions of section 271(1)(c) have to be strictly construed, the Hon'ble High court of Karnataka mandated that the notice issued should be set out the grounds which the assessee has to meet specifically, otherwise the principles of natural justice would be offended as the show cause notice would be vague. On the similar facts, Hon'ble Supreme Court dismissed the SLP in the case of SSA's Emerald Meadows (2016) 73 Taxman.com 248(SC). Ld.DR's argument that the case is distinguishable on facts is not acceptable since the Ld.DR relied on the passing observation of the Hon'ble High Court of AP. In the assessee's case, the issue is the defective notice u/s 271(1)(c) but not the penalty order. Unless the notice issued u/s 271(1)(c) is valid the penalty order cannot be held to be valid. The assessing officer did not strike off the irrelevant column in the notice and made known the assessee whether the penalty was initiated for the concealment of income or for furnishing the inaccurate particulars. In the assessment order also the AO simply recorded that the penalty proceedings u/s 271(1)(c) are initiated separately. Neither in the assessment order nor in the penalty notice, the assessing officer has put the assessee on notice for which offence, the penalty u/s 271 was initiated. Therefore, the case is squarely covered by the decision of the Hon'ble Jurisdictional High Court of cited (supra) wherein the Hon'ble high court held as under:

“On principle, when 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, on assessee would not have proper opportunity to put forth his defence. 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 Coordinate Bench of ITAT, Visakhapatnam in ITA No.229/Viz/2015 in the case of Narayana Reddy Enterprises, following the order of the Coordinate Bench in the case of Smt. Makina Annapurna Vs. ITO, Visakhapatnam in ITA Nos.604 & 605/Vizag/2014 dated 2.2.2017 held that non-striking of the irrelevant column renders the notice issued u/s 271 as invalid. Respectfully, following the decision of the Hon'ble AP High Court cited supra and the decision of this Tribunal cited (supra), we hold that the notice issued u/s 271 is invalid and consequent penalty imposed by the AO is cancelled.

7. In the result, appeal of the assessee is allowed."

10.1. Respectfully following the decision of Hon'ble High Court of Andhra Pradesh cited supra and decision of this Tribunal cited in the cited case, we hold that the notice issued u/s 271(1)(c) without striking of irrelevant column is invalid and consequent penalty imposed by the AO is cancelled. Hence, we set aside the orders of the lower authorities and allow the appeal of the assessee.

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

Order pronounced in the open court on 19th Jul 2019.

Sd/-

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 19.07.2019

L.Rama, SPS

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

1. निर्धारिती/ The Assessee- Shri Venkateswara Vaddera Coolie Sangam, D.No.6A-13-6, Ponangi Road, Southern Street, Eluru
2. राजस्व /The Revenue – Income Tax Officer, Ward-1, Eluru
3. The Principal Commissioner of Income Tax, Rajahmundry
4. The Commissioner of Income Tax (Appeals)-11, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam