

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
1246/Hyd/16	2006-07	Sri Venkateshwara Chit Funds, NALGONDA [PAN: AAZFS9604F]	Additional Commissioner of Income Tax, Range-9, HYDERABAD
1248/Hyd/16	2006-07		

For Assessee : Shri S. Rama Rao, AR
For Revenue : Shri A.C.Rout, DR

Date of Hearing : 14-08-2019
Date of Pronouncement : 05-09-2019

ORDER

PER S. RIFAUR RAHMAN, A.M. :

These two appeals filed by the assessee are directed against the order(s) of the Commissioner of Income Tax (Appeals)-7, Hyderabad, dated 18-03-2016, for the AY.2006-07. Since the facts and issues involved in these appeals are common and identical, these two appeals heard together and are being disposed-of by way of this common order. For the sake of convenience, appeal in ITA No.1246/Hyd/2016 is discussed in detail, hereunder.

2. Brief facts of the case are that the assessee is in the business of chit fund. During the course of regular scrutiny proceedings for the AY.2006-07, the Assessing Officer (AO)

noticed that assessee did not file return of Fringe Benefit Tax (FBT) even though the same is applicable to the assessee. Therefore, re-assessment proceedings were initiated and notice u/s.115WH of the Income Tax Act [Act] was issued on 31-10-2008. Even after adequate opportunities, neither the assessee filed the return nor furnished any details during the re-assessment proceedings. Finally, the assessment was completed on 20-11-2009 u/s.115WF r.w.s. 115WG (FBT) of the Act. Penalty proceedings u/s.271(1)(d) of the Act were also initiated and notices were issued through speed post. However, assessee through its' Authorized Representative (AR) submitted that assessee has not received any of such notice. During the assessment proceedings u/s.143(3) of the Act, it was brought to the notice of the AR and was asked to file objections if any on 14-05-2010. Since the assessee informed that they have not received the notices and at their request, certified copies of the assessment order, demand notice and penalty notices were given to the AR. Still the assessee has not made any submission on levy and penalty. Accordingly, penalty was levied u/s.271(1)(d) of the Act of Rs.74,873/-.

2.1. Aggrieved with the above order, assessee preferred an appeal before the CIT(A). Before the CIT(A), assessee submitted that assessee is not aware of the FBT provisions; therefore, even if there is a mistake or omission, the assessee requested the CIT(A) to hold that such omission is not intentional. After considering the assessee's submission, the Ld.CIT(A) confirmed the penalty by observing that even after notice u/s.115WH of the Act was issued, the assessee has not filed

any return, with the contention that assessee is not aware of the provisions, is not the reasonable cause nor acceptable explanation.

2.2. Aggrieved, assessee preferred an appeal before us, raising the following Grounds of Appeal:

“1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.

2. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in levying penalty of Rs.74,873/- u/s.271(1)(d) of the I.T.Act. The learned Commissioner of Income-Tax (Appeals) ought to have considered the explanation submitted and cancelled the penalty.

3. Any other ground that may be urged at the time of hearing”.

3. Ground Nos.1 & 3 are general in nature. Hence, needs no adjudication.

4. With regard to Ground No.2, Ld.AR submitted that assessee is not aware of the FBT provisions and he submitted that the FBT provisions are withdrawn and not applicable any more after 01-04-2010. He submitted that since the provisions of Section 115WD of the Act are withdrawn, the penalty u/s. 271(1)(d) cannot be levied. In this regard, he relied on the case of jurisdictional High Court in the case of ACIT Vs. Vijaya Finance [231 ITR 137] (AP).

5. On the other hand Ld.DR submitted that assessee was given several opportunities to file the objections, if any, and also assessee has not filed any return of income under the

provisions of FBT. The reason given by the assessee is that assessee-firm is not aware of the provisions, is not a proper explanation and not to be excused.

6. Considered the rival submissions and material on record. We noticed that assessee has not filed return of FBT even though assessee has incurred several expenditures, which attract FBT provisions. The AO has issued notice u/s.115WH of the Act on 31-10-2008 and in several occasions. Further, notices were issued to the assessee and assessee has not filed any return of income even though the above mistake was brought to the notice of the Ld.AR, who was appearing for the regular assessment u/s.143(3) of the Act. But assessee chose not to file return of income under the provisions of Section 115WD of the Act. The AO also issued penalty notice u/s. 271(1)(d) of the Act, initiating penalty proceedings. During the penalty proceedings also, assessee submitted that assessee has neither received any assessment order under FBT provisions nor received any demand notice or penalty notice. The same was served on 24-05-2010. If there is any objection, assessee could have filed submissions before the AO. Even though the penalty proceedings were completed on 31-05-2010. The assessee has chose not to respond to any of the proceedings u/s.115WE of the Act nor penalty proceedings. Therefore, in our considered view, it is a fit case for levy of penalty. Accordingly, we sustain the penalty u/s.271(1)(d) of the Act. Accordingly, the Ground raised by assessee is dismissed.

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

ITA No.1248/Hyd/2016:

8. As far as this appeal is concerned, The AO initiated penalty proceedings u/s.271FB r.w.s. 274 of the Act. Since the conduct and facts of the present case are similar to that of earlier appeal, discussed herein above, as per our earlier discussion, the penalty levied u/s.271FB of the Act is sustained in this appeal also. Accordingly, this appeal of assessee is dismissed.

9. To sum-up, both the appeals of assessee are dismissed.

Order pronounced in the open court on 5th September, 2019

Sd/-

**(P. MADHAVI DEVI)
JUDICIAL MEMBER**

Sd/-

**(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Hyderabad, Dated 5th September, 2019

TNMM

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- 3. CIT(Appeals)-7, Hyderabad.*
- 4. Pr.CIT-7, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*