

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

Before Smt. P. Madhavi Devi, Judicial Member

ITA No.1319/Hyd/2019		
Assessment Year: 2014-15		
Shri Mahesh Sharma Dorbala, Medak PAN:AIHPD8150H (Appellant)	Vs.	Income Tax Officer Ward - 1 Siddipet (Respondent)
Assessee by:	Sri S. Rama Rao	
Revenue by:	Sri Matta Padma, DR	
Date of hearing:	04/11/2019	
Date of pronouncement:	11/11/2019	

ORDER

This is assessee's appeal for the A.Y 2014-15 against the order of the CIT (A)-7, Hyderabad, dated 18.6.2019 confirming the penalty levied by the AO u/s 271(1)(c) of the Act. The assessee has raised 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 u/ s 271 (l)(c) of the LT Act.

3. The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that in the notice issued u/s 271(1)(c) of the LT. Act, the inappropriate portion is not deleted and that, therefore, the order of penalty is not legally valid.

4. The learned Commissioner of Income-Tax (Appeals) ought to have seen that there is neither concealment of income nor furnishing of inaccurate particulars of income and, therefore, no penalty is leviable.

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

2. Brief facts of the case are that the assessee, an individual, carrying on business of sales of Mobile Handsets under the name and style of Hitech Mobiles, e-filed his return of income for the A.Y 2014-15 on 23.09.2014 admitting a total income of Rs.4,99,110/-. During the assessment proceedings u/s 143(3) of the Act, the AO observed that in the assessee's Bank A/c, there are total deposits of Rs.12,32,64,037/- whereas the assessee has reported turnover of only Rs.7,35,24,936/- leaving the balance of Rs.4,97,39,101/-. When inquired about the difference, the assessee admitted that the deposits made into the Bank A/c are his turnover from the business of sale of recharge cards and easy recharge (mobile to mobile transfer) which do not have any income element there. He also submitted that he earns only 1% of the net income from the turnover of recharge cards. It was also submitted that there are no physical bills for the said turnover and the proof is only the Bank deposits. The AO did not accept the contention of the assessee and treated the sum of Rs.4,97,39,101/- as turnover and estimated the income @ 2.5% of the same. The assessee has accepted the assessment order by not filing any appeal. Thereafter, the AO initiated the penalty proceedings u/s 271(1)(c) of the Act by issuance of a notice dated 30.01.2017. The assessee did not appear nor did she file any explanation before the AO. Therefore, the AO imposed the minimum penalty u/s 271(1)(c) of the Act. Against the same, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before us.

3. As regards the ground of appeal No.3, against the validity of the notice, we find that copy of the notice is filed in the

paper book filed by the assessee and it is seen that the AO has not struck off the irrelevant paras from the proforma notice and it is not known as to whether the penalty is initiated for furnishing inaccurate particulars of income or for concealment of income or for both. Therefore, following the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Kar.) which has been confirmed by the Hon'ble Supreme Court in the case of CIT vs. SSA's Emerald Meadows - (2016) 73 taxmann.com 248 (SC), I hold that the notice is bad in law and therefore, the entire penalty has to be set aside.

4. Even otherwise on merits also, I find that the assessee though has not declared the deposits into his Bank A/c as his turnover from the sale of re-charge cards, but the relevant material was available on record i.e. Bank Statements. Therefore, it cannot be a case of concealment of information or furnishing of inaccurate particulars of income. In view of the same, I am inclined to delete the penalty levied by the AO u/s 271(1)(c) of the Act and confirmed by the CIT (A).

5. In the result, appeal filed by the assessee is allowed.
Order pronounced in the Open Court on 11th November, 2019.

Sd/-

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

Hyderabad, dated 11th November, 2019.

Vinodan/sps

Copy to:

- 1 Shri Mahesh Sharma Dorbala, Prop: M/s. Hitech Mobiles,
H.No.1-9-15/3 Old Bus Stand, Medak 502110
- 2 ITO Ward -1 Siddipet
- 3 CIT (A)-7 Hyderabad
- 4 Pr. CIT – 7 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order