

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC”, HYDERABAD**

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
1522/Hyd/16	2010-11	Sri M.Srinivasa Chary, HYDERABAD [PAN: AKJPM2144C]	Income Tax Officer, Ward-9(3), HYDERABAD
1523/Hyd/16			

For Assessee : Shri A.Srinivas, AR
For Revenue : Shri Sunku Srinivas, DR

Date of Hearing : 13-11-2019
Date of Pronouncement : 15-11-2019

ORDER

Both are assessee's appeals for the AY.2010-11, against the assessment order u/s.143(3) and Penalty order u/s. 271(1)(c) of the Income Tax Act [Act].

2. Brief facts of the case are that, the assessee is a partner in M/s.Sri Sai Engineerings and filed his return of income for the AY.2010-11 on 30-03-2012, declaring total income of Rs.1,94,590/-.

3. During the assessment proceedings u/s.143(3) of the Act, the Assessing Officer (AO) observed that the assessee has made cash deposits to the extent of Rs.13,72,000/- in his SB A/c with Indian Overseas Bank. When the assessee was asked to explain the sources for the cash deposits, he had submitted that he had withdrawn the cash through self and bearer cheques to the extent of Rs.16 Lakhs and the same was re-deposited into his bank account on different dates. Further,

the assessee had submitted that he has received Rs.5 Lakhs in cash from Shri K.Goverdhan for sale of his agriculture lands situated at Sarvin Village, Narayanapur Mandal, Nalgonda Dist. The AO, however, was not convinced with the assessee's contentions and treated the sum of Rs.13,72,000/- as 'assessee's income' and brought it to tax as 'un-explained investment' u/s.69 of the Act. Thereafter, he also initiated penalty proceedings u/s.271(1)(c) of the Act.

Aggrieved, the assessee filed an appeal before the CIT(A), who granted partial relief by accepting the sources to the extent of Rs.5 Lakhs, against which, the assessee is now in appeal before the Tribunal, by raising the following Grounds:

"1. The Appellate Commissioner ought not to have confirmed an amount of Rs.5,00,000/- u/s.69 of the I.T Act when the total sources have been explained and the books subjected to audit.

2. The Appellate Commissioner ought not to have confirmed the disallowance of the deduction claimed under chapter VIA amount into Rs.69,320/-.

3. Any other grounds which the appellant may urge either at or before the date of hearing".

4. Ld.Counsel for the assessee supported the order of the CIT(A), while the Ld.DR relied on the order of the AO.

5. Having regard to the rival contentions, I find that assessee has not been able to substantiate the claim of receipt of Rs.5 Lakhs on sale of land with any evidence. Therefore, the CIT(A) has confirmed the addition and even before the Tribunal, the assessee has not filed any evidence. Therefore, I do not find any reason to interfere with the order of Ld.CIT(A). Hence, the Grounds raised by assessee in this regard are

rejected and the appeal in ITA No.1522/Hyd/2016 is dismissed.

6. As regards the penalty proceedings u/s.271(1)(c) in ITA No.1523/Hyd/2016 are concerned, the AO had levied the penalty on the entire addition of Rs.13,72,000/- and on appeal, the Ld.CIT(A) partly allowed the appeal since he had deleted part of the addition in the appeal against the assessment order. Against this order of the Ld.CIT(A), the assessee is in appeal before the Tribunal, by raising the following Grounds:

“1. The Appellate Commissioner ought not to have sustained the levy of the penalty in the same proportion as the relief given in the quantum appeal.

2. The Appellate Commissioner ought not to have sustained the penalty based on the relief given.

3. Any other grounds which the appellant may urge either at or before the date of hearing”.

6.1. Further, the assessee had also filed the following Additional Grounds:

“1. The levy of penalty u/s.271(1)(c), is bad in law and liable to be quashed as the Assessing Officer omitted to explicitly mention whether the penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income.

2. Any other ground which the appellant might urge either before or at the time of hearing”

7. Ld.Counsel for the assessee submitted that the Hon'ble High Courts and the Hon'ble Supreme Court in a number of cases have held that – *‘if the penalty notices are not correctly issued by explicitly mentioning the reason for initiating the*

penalty proceedings, then the penalty order passed on such penalty notice is not valid'. Thus, he submitted that the legal question as raised in additional Grounds should be admitted and adjudicated.

8. Ld.DR opposed the admission of the additional ground. However, I am of the opinion that this is a legal ground, which can be raised at any point of time and the relevant notice is also on record. Therefore, I am inclined to admit the same. Further, I also find from the copy of the notice issued u/s.271(1)(c) of the Act, that the AO has not struck-off the inappropriate portion of the notice issued u/s.271(1)(c) of the Act and therefore, it is not clear if the penalty is initiated for furnishing of inaccurate particulars or concealment of income or for both. This issue is covered in favour of assessee by the decisions of the Hon'ble jurisdictional High Court in the case of Pr.CIT Vs. Baisetty Revathi, pronounced on 13th July, 2017 and also the Hon'ble Supreme Court in the case of CIT Vs. M/s.SSA's Emerald Meadows, in SLP No.11485/2016, dt.05-08-2016. Thus, the penalty order u/s. 271(1)(c) of the Act is set aside and this appeal of assessee is allowed.

9. To sum up, the appeal of assessee in ITA No.1522/Hyd/2016 is dismissed and ITA No.1523/Hyd/2016 is allowed.

Order pronounced in the open court on 15th November, 2019

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 15-11-2019

TNMM

Copy to :

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- 2. Income Tax Officer, Ward-9(3), Hyderabad.*
- 3. CIT(Appeals)-7, Hyderabad.*
- 4. Pr.CIT-7, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*