

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri D.S. Sunder Singh, Accountant Member

ITA Nos.1934 & 1933/Hyd/2018		
Assessment Year: 2012-13		
Asstt. Commissioner of Income Tax, Circle 1(3) Hyderabad	Vs.	Shri Rajesh Naidu Munirathnam, Hyderabad PAN:ADMPPM6749F
(Appellant)		(Respondent)
Asstt. Commissioner of Income Tax, Circle 1(3) Hyderabad	Vs.	Smt. Kalpana Raj Munirathnam, Hyderabad PAN:AFXPM1529A
(Appellant)		(Respondent)
Revenue by:	Smt. N Swapna, DR	
Assessee by:	Shri A.V. Raghu Ram	
Date of hearing:	02/09/2020	
Date of pronouncement:	04/09/2020	

ORDER

Per D.S. Sunder Singh, AM.

Both the above appeals are filed by the Revenue against the order of the learned CIT (A)-11 Hyderabad, dated 22.06.2018.

2. All the grounds in both the appeals are related to levy of penalty u/s 271(1)(c) of the Act. Since the facts are identical both the appeals are clubbed and a common order is being passed for the sake of convenience.

3. For the sake of convenience the facts are extracted from the appeal of Shri Rajesh Naidu in ITA No.1934/Hyd/18 and the same are applicable to both the appeals except the difference in quantum of amount. In this case, the AO completed the assessment u/s 144 r.w.s. 153A of the I.T. Act on total income of Rs.5,90,47,689/- for the A.Y.2012-13 against the admitted income of Rs.5,87,51,350/- and initiated the penalty proceedings u/s 271(1)(c) of the Act. The return was filed subsequent to the search conducted by the Department u/s 132 of the I.T. Act. The AO imposed the penalty of Rs.1,35,00,000/- u/s 271(1)(c). Against which the assessee went on appeal before the CIT (A). The learned CIT (A) dismissed the appeal on the ground of invalid u/s 271(1)(c) of the Act, due to non striking of irrelevant column in preprinted notice, relying on the decision of jurisdictional High Court. Hence, the Revenue is in appeal before the Tribunal.

4. During the appeal hearing, the learned DR argued that the AO rightly levied the penalty u/s 271(1)(c) of the Act and but for the search conducted u/s 132, the assessee ought not to have admitted the undisclosed incomes. The long-term capital gain income would not have come to the notice of the Department without having conducted the search. The CIT (A) erred in deleting the penalty merely on the ground of non-striking of the irrelevant portion in the notice u/s 271(1)(c). The DR further, submitted that while deciding the appeal in the case of Pr. CIT vs. Smt. Baisetty Revathi (398 ITR 88), the Hon'ble jurisdictional High Court had not considered the case of Chandulal. Therefore, submitted that the CIT (A) erred in quashing the notice, hence, requested to set aside the order of the Ld.CIT (A) and restore the order of the AO.

5. Per contra, the learned AR submitted that the assessee is having a good case on merits as well as on technical grounds for relief. He further submitted that the transactions were through banking channel and the assessee was filing the returns regularly for the earlier years. For the year under consideration, though the assessee had admitted the income and filed the return of income in response to the notice u/s 153A of the Act, the same was treated as invalid since, the assessee had failed to pay the taxes due. The assessee was facing financial problems, thus he could not pay the self-assessment tax. Therefore, argued that as rightly pointed out by the Ld.CIT (A), the assessee is having reasonable cause for non-payment of taxes. Therefore, argued that on merits also that the penalty required to be cancelled. Regarding the defective notice issued u/s 271(1)(c), the learned AR relied on the order of the CIT (A).

6. We have heard both the parties and perused the material placed on record. There is no dispute that the notice u/s 271(1)(c) was defective in as much as non-striking off of irrelevant column i.e. whether the penalty was initiated for concealment of income or furnishing of inaccurate particulars. Even the assessment order passed u/s 144 r.w.s.153A also silent on this issue and there was no mention of reasons for which failure of the assessee the penalty was initiated. The CIT (A) has deleted the penalty following the decision of the Hon'ble jurisdictional High Court in the case of Pr. CIT vs. Baisetty Revathi (398 ITR 88). The order of the CIT (A) reads as under:

“7..... I have considered the assessment order, notice issued u/s 274 for initiation of penalty order, the penalty order, submission of the assessee and material placed before me. It is seen from the penalty notice issued that the inapplicable/inappropriate portion of the notice is not

struck off by the AO. It is not ascertainable from the notice whether the penalty proceedings are initiated for concealment of income or for furnishing inaccurate particulars. The same renders the penalty proceedings invalid as held by the jurisdictional High Court in the case of Pr. CIT vs. Baisetty Revathy (Supra). Accordingly, it is held that the penalty proceedings are not validly initiated and the penalty levied is cancelled”.

7. Since the Ld.CIT(A) followed the order of the Hon'ble jurisdictional High Court which is binding on us, we do not find any reason to interfere with the order of the learned CIT (A). Hence the appeals filed by the Revenue are dismissed on the issue of notice u/s 271(1)(c) of the Act as invalid and accordingly, we uphold the order of the learned CIT (A). Since, we have upheld the order of the Ld.CIT(A) on the issue of the notice u/s 271(1)(c), we consider it not necessary to adjudicate the grounds on merits.

8. In the result, appeals of the Revenue are dismissed.
Order pronounced in the Open Court on 4th September, 2020.

Sd/- (P. MADHAVI DEVI) JUDICIAL MEMBER	Sd/- (D.S. SUNDER SINGH) ACCOUNTANT MEMBER
---	---

]Hyderabad, dated 4th September, 2020.

Vinodan/sps

Copy to:

- 1 ACIT, Central Circle 1(3), 7th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad
- 2 Shri Rajesh Naidu Munirathnam, B-18 Rolling Hills, Opp: Ramky Towers Gacfibowli, Hyderabad 500032
- 3 Smt.Kalpana Raj Munirathnam, B-18 Rolling Hills, Opp: Ramky Towers Gacfibowli, Hyderabad 500032
- 4 CIT (A)-11 Hyderabad
- 5 Pr. CIT – Central, Hyderabad
- 6 The DR, ITAT Hyderabad
- 7 Guard File

By Order