

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

ITA Nos. 583 to 589/Hyd/2019		
Assessment Years: 2011-12 to 2017-18		
Ankaa Realtors Hyderabad PAN:ABFFA0287M (Appellant)	Vs.	Asstt. Commissioner of Income Tax, Central Circle-3(4) Hyderabad (Respondent)
Assessee by:	Sri P. Murali Mohan Rao	
Revenue by:	Sri Solgy Jose T. Kottaram, DR	
Date of hearing:	28/09/2020	
Date of pronouncement:	30/09/2020	

ORDER

Per Bench:

All these are assessee's appeals for the respective A.Ys against the common and consolidated orders of the CIT (A)-11, Hyderabad for the A.Ys 2011-12 to 2017-18 confirming the penalty levied by the AO u/s 271(1)(b) of the Act.

2. The learned Counsel for the assessee submitted that during the assessment proceedings u/s.143(3) of the Act, the assessee has complied with all the directions of the AO and the assessment order has been passed u/s 143(3) of the Act on 5.12.2018 and the assessment order consists of 111 pages. Therefore, according to him, the assessee has complied with all the directions of the AO and has cooperated for the completion of the assessment proceedings in his case for all the relevant A.Ys,

but, the penalty u/s 271(1)(b) has been levied for non-appearance and for non-compliance of the notice u/s 142(1) of the Act on one single occasion i.e. on 20.09.2018 and submitted that the AO in the notice u/s 142(1) has required several details which could not be furnished on 20.09.2018, therefore, the assessee had sought time and it was not a case of non-compliance and since the assessee has cooperated with the AO, the penalty levied u/s 271(1)(b) should be deleted.

3. The learned DR, on the other hand, supported the orders of the authorities below and submitted that the assessee has not explained the reasonable cause for non-appearance before the AO on 20.09.2018 either before the AO or before the CIT (A) and therefore, the penalty levied u/s 271(1)(b) is clearly attracted and the penalty levied by the AO should be confirmed. He submitted that in the appeal before the CIT(A) against the penalty order, the assessee did not appear and did not explain the reasonable cause for non-appearance before the AO. Thus, according to him, the penalty order should be confirmed on this grounds also.

4. Having regard to the rival contentions and the material on record as well as the assessment order dated 05.12.2018, we find that there was a search u/s 132 of the Act in the case of the assessee on 20.03.2017 and in Para 3 of the assessment order, the AO has recorded the notices issued to the assessee and the compliance by the assessee. Para 3 is reproduced hereunder for ready reference:

“3.0 During the post search proceedings, Shri Amit Bansal, Managing partner of the assessee firm was summoned to explain the cash deposits in the bank account. In the absence of any explanation of sources of cash deposits by assessee firm and its partners, the cash was seized on 28.03.2017. Consequent to this search, the assessee firm is centralised to Central Circle 3(4) as per the order u/s 127 of Income Tax Act, 1961, of Pr. Commissioner of Income Tax(Central), Hyderabad in F.No.Pr.CIT(C)/Hyd/Centralisation/127/2018-19 dated 13.08.2018 r.w.s. 127 order in F.No.Pr.CIT-7/Hyd./Order u/s 127/2017-18 dated 13.09.2017. Accordingly notices u/s 153A dated 20.02.2018 were issued to the firm as applicable for the AYs 2011-12 to 2016-17. In response to the notice issued u/s 153A, the assessee firm has filed a letter dated 28.08.2018 on 29.08.2018 enclosing the belated returns of income as filed for A.Y.2011-12 on 16.08.2018, AY 2012-13 on 07.08.2018, AY 2013-14 on 31.07.2018, AY 2014-15 on 31.07.2018, AY 2015-16 on 31.07.2018 and AY 2016-17 on 31.07.2018 as returns of income, in response to notice u/s 153A issued for these six Assessment Years 2011-12 to 2016-17. Similarly Notice u/s 143(2) is issued for AY 2017-18 as applicable on 14.08.2018 and assessee firm filed its return of income for A.Y. 2017-18 on 31.03.2018 with NIL income”.

Further, at Pg.25 of the assessment order, we find that the AO has reproduced a copy of the final show cause letter dt.09.11.2018 which is as under:

*“OFFICE OF THE ASSISTANT COMMISSIONER OF
INCOME-TAX CENTRAL CIRCLE - 3(4), 8th FLOOR,
AAYAKAR BHAVAN, HYOERASAD*

Date: 9/11/2018

*To
The Principal Officer M/s Anka Realtors,
D.No 12,5-351A1B, Flat No.S-5. Upkar Apartments,
Ballad Estates,Tarnaka,
Hyderabad.*

Sir,

*Sub: Income Tax Assessment Proceedings
pending in the case of Anka Realtors. PAN: A8FFA0287M
for AY.2011-12 to A.Y2017-18 - Final Show cause letter -
Regarding*

Ref: (1) This office Notice U/s 143(2) dated 14.03.2018 for the A.Y 2017-18. (2) This office Notices U/s 143(2) dated 05.09.2018 for the AYs from 201 H2 to 2016-17

(3) This office Notices U/s 142(1) dated 05.09.2018 for the AYs from 2011-12 to 2017-18

(4) Your Letter dated 20.09.2018 received in this office on 18.09.2018 requesting for a time period of 10 days.

(5) This office letter in F.No.A.CIT-CC3(4)/Misc/2018-19 dated, 25.09.2018 considering your request.

(6) This Office letter in F.No ACIT-CC3(4) Show Cause /2018-19 dated 23.10.2018 to offer your explanation if any on or before 30.10.2018.

(7) This office letter in F.No.ACIT-CC3(4)/Show Cause/2018-19, dated 31.10.2018 to offer your explanation if any on or before 09.11.2018.

A search and seizure operation Vias conducted in your case on 20/03/2017 involving cash deposits in the firm's bank account. which needs to be.....

From the contents of the above letter of the AO dt.09.11.2018, it is seen that the assessee vide letter dt.20.09.2018 (ref.No.4) had requested for 10 days time to file the details called for in the notice u/s.142(1) of the Act dt.05.09.2018 and it appears that the said request was considered vide office letter dt.25.09.2018. Thus, it is clear that on 20.09.2018, there was a request for time which was not rejected or refused by the AO and hence cannot be considered as wanton or wilful non-compliance by the assessee. It is further noticed that the next notice to the assessee was only on 23.10.2018 which is the date of penalty order. Therefore, the argument of the learned DR that there was no co-operation from the assessee during the assessment proceedings due to which the Department was constrained to levy the penalty u/s 271(1)(b) of the Act does not hold water. Further, except stating that the penalty is being levied for non-compliance of the statutory notice dated 5.9.2018 for furnishing of details/information as mentioned

therein by 20.09.2018, there are no other findings by the AO in his order dt.23.10.2018 about the non-co-operation from the assessee on any other dates.

4.1. Since the assessee has not appeared before the CIT (A), the proper course of action would be to remand the issues to the CIT(A) with a direction to the assessee to appear before the CIT (A) and explain the reasonable cause for non-appearance on 20.09.2018. However, since the penalty levied for each of the A.Y is only Rs.10,000/-, due to the smallness of the amount, and also the fact that the assessee had requested for time on 20.09.2018 by way of letter which is mentioned in the letter of the AO dt.09.11.2018, and is a matter of record, we do not think it necessary to remand the issue back to the file of the CIT (A) at this stage. Therefore, we are of the opinion that the penalty u/s 271(1)(b) levied by the AO is not justified and is accordingly deleted for all the A.Ys.

5. In the result, all the appeals of the assessee are allowed.

Order pronounced in the Open Court on 30th September, 2020.

Sd/- (A. MOHAN ALANKAMONY) ACCOUNTANT MEMBER	Sd/- (P. MADHAVI DEVI) JUDICIAL MEMBER
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Hyderabad, dated 30th September, 2020.

Vinodan/sps

Copy to:

- 1 Ankaa Realtors, C/o P. Murali & Co. C.As, 6-3-655/2/3
Somajiguda, Hyderabad 500082
- 2 Asstt. CIT, Central Circle 3(4) Hyderabad
- 3 CIT (A)-11, Hyderabad
- 4 Pr. CIT – Central, Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order