

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ B ‘ Bench, Hyderabad
(Through Video Conferencing)
Before Shri S.S. Godara, Judicial Member
AND
Shri Laxmi Prasad Sahu, Accountant Member

ITA Nos.1158 to 1162/Hyd/2018		
Assessment Years: 2009-10 to 2013-14		
Cheraku Sarotham Reddy, Villa No.30, Open Skies, Golden Mile Road, Kokapet, Hyderabad. PAN No.ADSPC8194J.	Vs.	The Assistant Commissioner of Income Tax, Central Circle – 1(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Smt. V. Srilatha, AR.	
Revenue by:	Sri Y.V.S.T. Sai, DR.	
Date of hearing:	15/09/2021	
Date of pronouncement:	17/09/2021	

ORDER

Per S. S. Godara, J.M.

These assessee's five appeals ITA Nos.1158 to 1162/Hyd/2018 for A.Ys. 2009-10 to 2013-14 arise from the CIT(A)-11, Hyderabad's as many orders; all dated 28.02.2018 passed in Case Nos.410 to 414/2016-17/ACIT-CC-1(1) / CIT(A)-11 Hyd thereby confirming the assessing officer's action imposing penalty of Rs.10,00,000/-, 1,90,000/-, 93,00,000/-, 63,00,000/- and 20,00,000/- for the assessment years in proceedings u/s 271(1)(c) of the Income Tax Act, 1961 (in short the Act), respectively.

Heard both the parties. Case files perused.

2. It emerges at the outset that the assessee's all five instant appeals raise his identical sole substantive ground challenging correctness of the impugned penalty proceedings invoked u/s 271(1)(c) of the Act by both learned lower authorities. There is further no quarrel that all these penalties emanate from the department search action dt.30.09.2013 undertaken in assessee's case followed by initiation of Sec.153A proceedings vide notice dated 12.11.2014 culminating in the corresponding quantum assessments; all framed on 23.03.2016.

3. We notice with the able assistance coming from both the sides that the Assessing Officer's assessment had made additions; involving varying sums regarding the difference in agricultural income as well as additional undisclosed income which was allegedly unearthed during the course of search. We make it clear that the Assessing Officer thereafter issued his identical penalty notices that alleging the assessee go "have concealed the particulars of your income furnished, inaccurate particulars of such income". And that he thereafter declined the assessee's explanation and imposed the impugned penalties which in turn have been upheld in CIT(A)'s identical lower appellate discussion.

This leaves the assessee aggrieved.

4. We have given our thoughtful consideration to rival pleading against and in support of impugned penalties and find no reason to agree with the department's stand. This is because of the clinching fact that we are dealing with a search dated 30.09.2013 i.e. carried out after 01.06.2007 i.e., covered under

Sec.271(1)(c) Explanation 5A prescribing that when an assessee is found to be the owner of specified categories of assets not declared in the return already furnished or has not filed any return within the due date, he shall be deemed to have concealed the particulars of such an income or furnished inaccurate particulars thereof. We keep in mind this specific provision and notice from a perusal of the Assessing Officer's identical detailed discussion in para 2.1 of his assessment order (s) reading as under :

“He was found to have not maintained proper books of accounts, all the receipt and expenditures are noted down in note books and scribbling pads. Assessments are done after taking into consideration the material seized from the premises of the assessee, undisclosed income estimated and subsequent admission by the assessee”.

Meaning thereby that the learned assessing authority itself makes it clear that none of the specified material i.e., money, bullion or jewellery or entry in books of accounts u/s 271(1)(c) Explanation 5A is attracted in the given facts and circumstances before us. It also takes care of learned CIT-DR's contention in the light of hon'ble apex Court's decision in K. P. Madhusudhanan Vs. CIT (2001) 251 ITR 99 (SC) that invocation of the main provision u/s 271 also includes the Explanation therein. We conclude with these facts and circumstances that the learned lower authorities have erred in law and on facts in imposing the impugned penalties in all these assessment orders in violation of the specific conditions u/s 271(1)(c) Explanation 5A of the Act. The same are deleted accordingly.

All other pleadings on merits are rendered infructuous.

5. These assessee's five appeals are allowed. A copy of this common order be placed in the respective case files.

Order pronounced in the Open Court on 17th September, 2021.

Sd/- (LAXMI PRASAD SAHU) ACCOUNTANT MEMBER	Sd/- (S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 17th September, 2021.

TYNM / sps

Copy to:

S.No	Addresses
1	Cheraku Sarotham Reddy, Villa No.30, Open Skies, Golden Mile Road, Kokapet, Hyderabad.
2	The ACIT, Central Circle – 1(1), Hyderabad.
3	CIT (A)- 11, Hyderabad
4	Pr. CIT, Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File.

By Order