

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ‘ B ‘ Bench, Hyderabad**  
*(Through Video Conferencing)*

**Before**  
**Shri A. Mohan Alankamony, Accountant Member**  
*AND*  
**Shri S.S. Godara, Judicial Member**

ITA No.165/Hyd/2018		
Assessment Year: 2006-07		
Sama Ramachandra Reddy, Hyderabad. PAN : AUAPS0609R	Vs.	The DCIT, Central Circle – 2, Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri P. Murali Mohan Rao
Revenue by:		Shri Subbaraju Penmetsa
Date of hearing:		14/12/2021
Date of pronouncement:		16/12/2021

**ORDER**

**Per S. S. Godara, J.M.**

This assessee’s appeal for A.Y 2006-07 arises from the Commissioner of Income Tax (Appeals)-1, Hyderabad’s order dated 15.11.2016, in case No.0598/CIT(A)-1/Hyd/2014-15/2017-18, involving proceedings under section 221(1) of Income Tax Act, 1961 (in short, “the Act”).

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive grievance that both the learned lower authorities have erred in law and on facts in imposing section 221(1) penalty of Rs.6,36,450/-, we note that the corresponding lower appellate discussion to this effect reads as under :

**5. Only Ground is regarding penalty u/s.221(1) of Rs.6,36,450/-**

5.1 The assessee is in the business of real estate. A search and seizure operation u/s.132 was conducted on 09.10.2007. During the search proceedings, lot of incriminating materials pertaining to the real estate activity carried out by the assessee over the period years were found and seized. Consequent to search and seizure operation, notice u/s.153A dated 26.06.2008 was issued for the AY 2002-03 to AY 2007-08.

a) The assessee filed return of income for the AY 2006-07 on 09.09.2009 admitting income of Rs.46,23,547/- against the admitted income of Rs.50,08,917/- u/s.132 (4). However, the assessee has not paid taxes on the admitted income and the total self-assessment tax payable as per the assessee was Rs.21,21,500/-.

- b) As the assessee was in default in payment of self assessment tax, recovery proceedings were initiated by the Assessing Officer and his bank accounts were attached u/s.226(3) of the IT Act. However, no recovery was made due to NIL balances and meagre balances in those accounts. Subsequently, the assessee has closed those bank accounts.
- c) Apart from that, certain agricultural lands of the assessee were also attached u/s.281B and the same were certified to TRO (Central), Hyderabad.
- d) In the meantime, the assessment was completed u/s.143(3) dated 31.12.2009 determining total income at Rs.1,32,62,855/- raising a demand of Rs.68,99,511/-
- e) The assessee earned huge amounts of business income / profit out of purchase and sale of lands/plots over a period of years. But he has wilfully evaded the payment of tax on the profit earned. Search & Seizure operation unearthed the undisclosed income was admitted by the Assessee in his sworn statement u/s.132(4) and the returns filed subsequently in response to the notice u/s.153A. The assessee has not paid self assessment tax liability on account of income admitted in spite of earning those incomes.
- f) During the year under consideration, the assessee has sold various land properties and earned total profit of Rs.50,08,917/-. The assessee admitted the same in the sworn statement recorded u/s.132(4). Further, the sale amount of Rs.45,39,547/- was also admitted in the return of income also. The assessee appropriated the entire funds for his own purposes without paying self assessment tax liability.
- g) The Assessing Officer issued a notice u/s.221(1) dated 08.09.2010 asking the assessee to show cause as to why the penalty should not be levied u/s.221. The assessee vide his reply dated 15.09.2010, stated that he has filed appeal against the assessment u/s.143(3)

and relied up on the case law of ITO Vs. Devsons (P) Ltd (2008) 113 TTJ (Delhi) 615.

- h) The Assessing Officer concluded that the assessee did not have any genuine reason for not paying taxes as per income returned. From the above, it is clear that he has concealed substantial amount of his business income and the same was admitted subsequently in the return of income filed in response to the notice u/s.153A.

The Assessing Officer also opined that the assessee has wilfully attempted in all manners to avoid payment to tax on the admitted income. Accordingly, the Assessing Officer levied penalty u/s.221(1) to the extent of 30% of the self-assessment tax payable of Rs.21,21,500/- which amounted to Rs.6,36,450/-.

- 5.2 Before me, the appellant submitted that the Hon'ble CIT(A), Guntur while passing the order for the AY 2005-06 to AY 2007-08 vide ITA Nos.0473 to 0475/CIT(A)/GNT/09-10 dated 15.06.2011 has considered the revised computation filed by the appellant and allowed the appeal by deleting the entire additions. The appellant submitted the balance tax payable is NIL and he claims that he already paid the self assessment tax. The appellant also submitted that he is facing huge financial crisis and getting money only to satisfy his daily lives and he is unable to get any loan to clear the taxes and it is unimaginable at present situation to pay the taxes levied.

- 5.3 As per Section 221(1) says that :

*Penalty payable when tax is in default*

- (1) When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable under sub-section (2) of section 220, be liable, by way of penalty, to pay such amount as the [Assessing] Officer may direct, and*

*in the case of a continuing default, such further amount or amounts as the [Assessing] Officer may, from time to time, direct, so, however, that the total amount of penalty does not exceed the amount of tax in arrears :*

*Provided that before levying any such penalty, the assessee shall be given a reasonable opportunity of being heard :*

*[Provided further that where the assessee proves to the satisfaction of the [Assessing] Officer that the default was for good and sufficient reasons, no penalty shall be levied under this section.]”*

*Explanation - For the removal of doubt, it is hereby declared that an assessee shall not cease to be liable to any penalty under this sub-section merely by reason of the fact that before the levy of such penalty he has paid the tax.]*

- 5.4 As per the penalty order, the Assessing Officer submitted that the appellant ***“has not paid any taxes on admitted income and the total self-assessment tax payable by assessee.....”***

Before me, the appellant has not offered any explanation regarding non-payment of taxes or for the matter tax paid. The Appellant only submission is the addition made during the assessment were deleted by the CIT(A), Guntur. No clarification was submitted by the appellant during the appeal proceedings, regarding payment or non-payment of tax of the ***admitted income***. In absence of evidence, the submission of the appellant holds no good. In this background, I uphold the penalty levied by the Assessing Officer.

3. Mr. Murali Mohan Rao vehemently contended that the impugned penalty is not sustainable in view of the fact that the CIT(A) had granted relief to assessee in quantum proceedings; which in turn, stands upheld upto “tribunal”. He has quoted this tribunal’s co-ordinate bench’s order in ITA No.164/Hyd/2018 in preceding assessment year 2005-06 that the impugned penalty is

not maintainable once the corresponding quantum addition stands deleted in light of section 221(2) of the Act. His last plea in light of case law Heddle Knowledge (P) Ltd. Vs. ITO (2018) 19 taxmann.com 376 (Mumbai) is that amended provision of section 140A(3) with effect from 01-04-1989 does not envisage any penalty for nonpayment of self-assessment tax, which renders the entire section 221 penal mechanism invalid.

4. The Revenue has placed strong reliance on CIT(A)'s findings. Its specific case is that the impugned penalty pertains to self-assessment than any addition made in the quantum proceedings.

5. We have given our thoughtful consideration to rival pleadings and find prima facie merit in assessee's case in light of the fact that the CIT(A) has not considered the tribunal's quantum order declining the Revenue's appeal on 26.08.2019 thereby upholding the corresponding lower appellate authorities' action. Coupled with this, the fact that this tribunal yet another co-ordinate bench's decision has already held that even non-payment of self-assessment tax does not attract section 271(1)(c) penalty (supra).

6. The fact also remains that the clinching issue as to whether the impugned pending penalties to quantum addition or self-assessment requires the Assessing Officer's afresh adjudication not only in light of section 221(2) of the Act but also going by the tribunal's co-ordinate bench's order. It is made clear that the impugned penalty would not survive in case the corresponding quantum addition(s) stands deleted as well as on

account of the fact that this tribunal has already held that section 140A(3) itself renders the foregoing penalty mechanism inapplicable. The Assessing Officer shall finalize his consequential proceedings within three effective opportunities of hearing.

7. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the Open Court on 16<sup>th</sup> December, 2021.

<b>Sd/-</b> <b>(A. MOHAN ALANKAMONY)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(S.S. GODARA)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 16<sup>th</sup> December, 2021.

***TYNM/sps***

Copy to:

S.No	Addresses
1	Sama Ramachandra Reddy, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, I Floor, Somajiguda, Hyderabad – 82.
2	The Deputy Commissioner of Income Tax, Central Circle – 2, Hyderabad.
3	CIT(A)-1 Hyderabad.
4	Pr.CIT-1 Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*