

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

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER**

ITA No.	A.Y.	Appellant	Respondent
1639/Hyd/17	2007-08	Sri M.Chandra Sekhar Goud, Hyderabad [PAN: AHFPG5179A]	Income Tax Officer, Ward-7(2), Hyderabad
1640/Hyd/17			

For Assessee : Shri G.Sudhakara Rao, AR  
For Revenue : Shri L.Jeevanlal, Sr.DR

Date of Hearing : 11-03-2022  
Date of Pronouncement : 11-03-2022

**ORDER**

This assessee's two appeals for AY.2007-08 arise against the CIT(A)-3, Hyderabad's common order dated 26-08-2016 passed in case No.0557 / 14-15 & 0245 / 15-16 / CIT(A)-3, involving proceedings u/s.144 r.w.s.147 & u/s.271(1)(c) of the Income Tax Act, 1961 [in short, 'the Act']; respectively.

Heard both the parties. Case files perused.

2. Coming to the assessee's sole substantive ground challenging correctness of both the lower authorities' action adding license fee amount of Rs.16,13,400/- as "unexplained" forming subject matter of quantum appeal ITA No.1639/Hyd/2017, learned counsel has raised twin folded arguments *inter alia* pleading that the Assessing Officer had indeed initiated Section 154 proceedings *qua* the same on 13-08-2010 rendering the impugned re-assessment as "invalid"

and he had later on framed the re-assessment in issue without issuing Section 143(2) notice.

3. I find no merit in either of the assessee's foregoing twin arguments. This is for the reason that even if it is presumed that the Assessing Officer ought to have proceeded with Section 154 action only there is hardly any dispute in light of hon'ble apex court's decision in T.S.Balaram, ITO Vs. M/s.Volkart Brothers [82 ITR 50] (SC) provides that *such a rectification is meant for apparent mistake(s) than those requiring detailed roving enquiries*. It is made clear that the Assessing Officer had indeed issued Section 148 notice resulting in the impugned addition on account of assessee's failure only to explain the source of the foregoing license fee amount of Rs.16,13,400/-. His latter argument in light of the ACIT Vs. Hotel Blue Moon (2010) 321 ITR 362 (SC) also stands rejected as it has come on record that no return had been filed in furtherance to Section 148 notice. This quantum appeal ITA No.1639/Hyd/2017 is declined therefore.

4. I next advert to assessee's consequential penalty appeal ITA No.1640/Hyd/2017 involving the Assessing Officer's penalty show cause notice dt.01-12-2012 nowhere specifying as to whether the taxpayer had concealed particulars of his taxable income or furnished inaccurate particulars of such an income as contemplated u/s. 271(1)(c) of the Act. Hon'ble jurisdictional high court's decision Pr.CIT Vs. Baisetty Revathi [398 ITR 88] (Telangana & AP) holds that - *such a failure renders penal action as not sustainable in law*. The very legal preposition also stands reiterated in Mohd.Farhan A.Shaikh

Vs. DCIT (2021) [125 taxmann.com 253] (Bom) (FB) as well. The impugned penalty is deleted therefore. This latter appeal ITA No.1640/Hyd/2017 is accepted. Ordered accordingly.

No other argument has been raised before me.

5. To sum up, assessee's quantum appeal ITA No.1639/Hyd/2017 is dismissed and the penalty appeal ITA No.1640/Hyd/2017 is allowed. A copy of this common order be placed in the respective case files.

*Order pronounced in the open court on 11<sup>th</sup> March, 2022*

Sd/-  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 11-03-2022

TNMM

*Copy to :*

*1.Sri M.Chandra Sekhar Goud, C/o.G.Sudhakara Rao, Advocate, H.No.8-3-191/188/51-B, Vengal Rao Nagar Colony, Hyderabad.*

*2.The Income Tax Officer, Ward-7(2), Hyderabad.*

*3.CIT(Appeals)-3, Hyderabad.*

*4.Pr.CIT-3, Hyderabad.*

*5.D.R. ITAT, Hyderabad.*

*6.Guard File.*