

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD

BEFORE  
SHRI RAMA KANTA PANDA, VICE PRESIDENT  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA Nos. 501 & 502/Hyd/2023  
(निर्धारण वर्ष / Assessment Years: 2010-11 & 2013-14)

Sunil Kumar Ahuja,  
Hyderabad  
[PAN: ABLPA2822L]

Dy. Commissioner of  
Income Tax,  
Vs. Central Circle-1(1),  
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri S. Rama Rao, AR  
राजस्व द्वारा/Revenue by: Shri K. Madhusudan, CIT-DR

सुनवाई की तारीख/Date of hearing: 23/11/2023  
घोषणा की तारीख/Pronouncement on: 29/11/2023

आदेश / ORDER

**PER K. NARASIMHA CHARY, J.M:**

Aggrieved by the order(s) dated 13/09/2023 passed by the learned Principal Commissioner of Income Tax (Central)- Hyderabad, ("Ld. PCIT"), under section 263 of the Income Tax Act, 1961 (for short "the Act"), in the case of Sunil Kumar Ahuja ("the assessee") for the assessment years 2010-11 & 2013-14, assessee preferred these appeals.

2. Brief facts of the case are that on a perusal of the assessment records for the assessment years 2010-11 and 2013-14, learned PCIT found that the assessment orders passed under section 143(3) of the Income Tax Act, 1961 ('the Act') were erroneous insofar as those are prejudicial to the interest of Revenue because once the undisclosed income is assessed, the non-initiation of penalty or recording satisfaction for initiation of penalty by the learned Assessing Officer has resulted in an incorrect application of law as liability for penalty is a legal consequence mandated by the Act for not disclosing the correct income in the return of income filed under section 139 of the Act. According to the learned PCIT, non-initiation of penalty under section 271(1)(c) of the Act does not have deterrent effect and such action can also lead to perpetuating such wanton acts of concealment of income to evade due tax obligations. Learned PCIT, therefore, held that the assessment order is erroneous order insofar as it is prejudicial to the interest of Revenue, and set aside the order to the learned Assessing Officer, for the purpose of initiating the penalty proceedings.

3. Assessee challenged these orders under section 263 of the Act stating that the learned PCIT erred in holding the assessment order as erroneous and prejudicial to the interests of Revenue merely because the learned Assessing Officer has not initiated penalty proceedings and because penalty proceedings though connected are distinct, independent, and separate proceedings. Learned AR argued that the learned PCIT could not assume jurisdiction under section 263 of the Act for the sole reason that the learned Assessing Officer did not initiate penalty proceedings under section 271(1)(c) of the Act as the same is prejudicial to the interest

of the Revenue, if any, has to be proved with reference to the assessment order only. He further submitted that recording of satisfaction of the specified authority under section 271(1)(c) of the Act during the pendency of the assessment proceedings is a condition precedent for initiation of penalty proceedings and any satisfaction, which is borrowed or supplied, by way of direction or otherwise coming on record after the assessment would be bad in law. According to the learned AR, learned PCIT failed to appreciate the law that if two reasonable constructions of a taxing provision are possible, that construction which favors the assessee must be adopted and preference needs to be given to the reasoning of the majority of the Hon'ble High Courts. He placed reliance on the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Rakesh Nain Trivedi, [2017] 80 taxmann.com 238. He further submitted that the facts of these two appeals are identical to the facts of the case in Sri Adithya Homes Private Limited vs. ACIT decided by a Co-ordinate Bench of the Tribunal in ITA Nos. 230 & 231/Hyd/2023 for the assessment years 2016-17 and 2017-18, dated 21/07/2023.

4. Per contra, learned DR submitted that the assessment order as it is, is erroneous insofar as it is prejudicial to the interest of Revenue because in this case, the twin requirements specified in the case of M/s. Malabar Industries Co Ltd vs. CIT (2000) 109 taxman 66(SC) are satisfied. He placed reliance on the decisions of the Hon'ble Madhya Pradesh High Court reported in the cases of ACIT vs. Indian Pharmaceuticals (1980) 123 ITR 874 (MP) and ACIT vs. Kantilal Jain (1980) 125 ITR 373 (MP) and followed in some other cases.

5. We have gone through the record in the light of the submissions made on either side. Having regard to the contentions on either side, we find the issue that arises for consideration in these appeals is, whether the learned PCIT, in exercise of power under Section 263 of the Act, while holding the order of the learned Assessing Officer to be erroneous and prejudicial to the interest of the Revenue for the learned Assessing Officer not initiating penalty proceedings while completing assessment under Section 143(3) of the Act. This issue is no longer res integra.

6. In the case of CIT vs. Rakesh Nain Trivedi, [2017] 80 taxmann.com 238 (Punjab & Haryana) the Hon'ble High Court of Punjab and Haryana dealt with this aspect exhaustively and after noticing so many judgments, holding the field observed that,-

*"5. After hearing learned counsel for the parties, we find the issue that arises for consideration of this Court in this appeal is could the CIT in exercise of power under Section 263 of the Act hold the order of the Assessing Officer to be erroneous and prejudicial to the interest of the revenue where the Assessing Officer had failed to initiate penalty proceedings while completing assessment under Section 153A of the Act.*

*6. It may be noticed that the said issue is no longer res integra. This Court in Subhash Kumar Jain case (supra) agreeing with the view of High Courts of Delhi in Additional J.K.D.'s Costa case (supra), CIT v. Sudershan Talkies [1993] 201 ITR 289 (Delhi) and CIT v. Nihal Chand Rekyan [2000] 242 ITR 45/[2002] 123 Taxman 353 (Delhi), Rajasthan in CIT v. Keshrimal Parasmal [1986] 157 ITR 484/27 Taxman 447 (Raj.), Calcutta in CIT v. Linotype & Machinery Ltd. [1991] 192 ITR 337 (Cal.) and Gauhati in Surendra Prasad Singh v. CIT [1988] 173 ITR 510/40 Taxman 346 (Gau.) whereas dissenting with the diametrically opposite approach of Madhya Pradesh High Court in Addl. CIT v. Indian Pharmaceuticals [1980] 123 ITR 874 (MP.), Addl. CIT v. Kantilal Jain [1980] 125 ITR 373/[1981] 5 Taxman 92 (MP.) and Addl. CWT v. Nathoolal Balaram [1980] 125 ITR 596/3 Taxman 170 (MP.) had concluded that where the CIT finds that the Assessing Officer had not initiated penalty proceedings under Section 271(1)(c) of the Act in*

*the assessment order, he cannot direct the Assessing Officer to initiate penalty proceedings under Section 271(1)(c) of the Act in exercise of revisional power under Section 263 of the Act. The relevant observations recorded therein read thus:-*

*"9. Now adverting to the second limb, it may be noticed that the Delhi High Court in judgment reported in Addl. CIT vs. J.K.D.'Costa (1981) 25 CTR (Del) 224 : (1982) 133 ITR 7 (Del) has held that the CIT cannot pass an order under s. 263 of the Act pertaining to imposition of penalty where the assessment order under s. 143(3) is silent in that respect. The relevant observations recorded are:*

*"It is well established that proceedings for the levy of a penalty whether under s. 271(1)(a) or under s. 273(b) are proceedings independent of and separate from the assessment proceedings. Though the expression "assessment" is used in the Act with different meanings in different contexts, so far as s. 263 is concerned, it refers to a particular proceeding that is being considered by the Commissioner and it is not possible when the Commissioner is dealing with the assessment proceedings and the assessment order to expand the scope of these proceedings and to view the penalty proceedings also as part of the proceedings which are being sought to be revised by the Commissioner. There is no identity between the assessment proceedings and the penalty proceedings; the latter are separate proceedings, that may, in some cases, follow as a consequence of the assessment proceedings. As the Tribunal has pointed out, though it is usual for the ITO to record in the assessment order that penalty proceedings are being initiated, this is more a matter of convenience than of legal requirement. All that the law requires, so far as the penalty proceedings are concerned, is that they should be initiated in the court of the proceedings for assessment. It is sufficient if there is some record somewhere, even apart from the assessment order itself, that the ITO has recorded his satisfaction that the assessed is guilty of concealment or other default for which penalty action is called for. Indeed, in certain cases it is possible for the ITO to issue a penalty notice or initiate penalty proceedings even long before the assessment is completed though the actual penalty order cannot be passed until the assessment finalised. We, therefore, agree with the view taken by the Tribunal that the penalty proceedings do not form part of the assessment*

*proceedings and that the failure of the ITO to record in the assessment order his satisfaction or the lack of it in regard to the leviability of penalty cannot be said to be a factor vitiating the assessment order in any respect. An assessment cannot be said to be erroneous or prejudicial to the interest of the revenue because of the failure of the ITO to record his opinion about the leviability of penalty in the case."*

7. In the case of Sri Adithya Homes Private Limited (supra), a Co-ordinate Bench of the Tribunal having noticed the decision in the case of Rakesh Nain Trivedi (supra), and also the line of decisions following the view of Hon'ble Madhya Pradesh High Court in the cases of ACIT vs. Indian Pharmaceuticals (1980) 123 ITR 874 (MP) and ACIT vs. Kantilal Jain (1980) 125 ITR 373 (MP) etc., relied on the decision of the Hon'ble Apex Court in the case of CIT vs. Vegetable Products Ltd., (1973) 88 ITR 192 (SC) held the issue in favour of the assessee, stating that in case of more than one interpretation of taxing statute is possible, then the interpretation which favours the assessee, more particularly when it pertains to penalty, has to be adopted.

8. Since the facts are identical, respectfully following the view taken by the Co-ordinate Bench of the Tribunal in the case of Sri Adithya Homes Private Limited (supra), and the decision of Hon'ble Punjab and Haryana High Court in the case of Rakesh Nain Trivedi (supra), we hold the issue in favour of the assessee and allow the grounds in both the appeals.

9. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on this the 29<sup>th</sup> day of November, 2023.

Sd/-  
**(RAMA KANTA PANDA)**  
**VICE PRESIDENT**  
Hyderabad, Dated: 29/11/2023  
TNMM

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Sunil Kumar Ahuja, H.No. 6-3-596/72, 2<sup>nd</sup> Floor, Naveen Nagar, Erramanzil Colony, Hyderabad.
2. Dy. Commissioner of Income Tax, Central Circle-1(1), Hyderabad.
3. PCIT(Central)- Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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