

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1572/Hyd/2013
Assessment Year: 2006-07**

Sri Nilaya AR Projects,
Hyderabad.

vs. Income-tax Officer,
Ward – 8(1), Hyderabad

PAN – ABZFS 6028 D
(Appellant)

(Respondent)

Assessee by : Shri S. Rama Rao
Revenue by : Shri A. Sitarama Rao

Date of hearing : 15-12-2016
Date of pronouncement : 04-01-2017

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This is an appeal of the assessee directed against the order of the learned Commissioner of Income-tax(A) - III, Hyderabad, dated 10/09/2013, for AY 2006-07.

2. Briefly the facts of the case are that in the case of the assessee, a survey u/s 133A was conducted on 25/08/2008 and certain material was impounded wherein transactions pertaining into the previous year relevant to the AY 2006-07. In the return of income the assessee has shown only an amount of Rs. 72,00,000/- as investment made in the land purchase. However, from the impounded material, it was found that an amount of Rs. 90,00,000/- had been invested in the purchase of land. The difference amount of Rs. 18,00,000/- was treated as unexplained income in the hands of the assessee firm by the AO. The said addition was confirmed by the CIT(A) as well as ITAT.

3. Thereafter, the AO initiated penalty proceedings u/s 271(1)(c) of the Act by issuing notice dated 24/10/2011 on the ground that the assessee has concealed the particulars of income while furnishing the return of income. After considering the response of the assessee dated 28/10/2011, the AO levied a minimum penalty of Rs. 6,05,880/- u/s 271(1)(c) of the Act.

4. Aggrieved the assessee preferred an appeal against the penalty order before the CIT(A).

5. Before the CIT(A), the assessee stated that it had purchased land from Vijay Kumar and Tirumala Rao. An amount of Rs. 72 lakhs had been paid to Mr. Vijay. Further, the amounts of Rs. 10 lakhs and Rs. 8 lakhs were also paid to the aforementioned persons as advance. It was contended that the assessee had not concealed any particulars of income and the department had accepted the books of assessee and the addition was made only on the basis of piece of paper where certain amounts were noted. It was further stated that the assessee had furnished letters from Mr. Vijay Kumar confirming that he had only received Rs. 72 lakhs and that the other amount of Rs. 18 lakhs had not been received.

6. After considering the submissions of the assessee, the CIT(A) has elaborately discussed the issue at length with various case laws. Relevant observations of the CIT(A) are as under:

"5.9 Coming to the facts of the case of the appellant, it is clear that the appellant had paid an amount of Rs. 18 lakhs over and above what was recorded in the books of account and what was shown in the return of income. The paper has been found and impounded from the custody of the appellant during the course of survey and it is clearly mentioned the entire transaction. It is clear that the appellant had made the payment of Rs. 18 lakh out of undisclosed sources and this represented the appellant unaccounted income which had not been disclosed to the Department even after survey. The honourable ITAT vide its order ITA number 664/HYD/10 in the case of the appellant has

clearly held that the amount of Rs. 18 lakhs represented the unaccounted investment in the hands of the appellant.

5.10.....

5.11 It is very clear from the above facts that the appellant had earned unaccounted income and had made the payments of Rs. 18 lakhs out of that unaccounted income. Even after a paper was found from the premises of the appellant an impounded during the course of survey, the appellant did not come clean. The authenticity of the document and its entries was confirmed and even then the appellant did not come forward with the truth and instead started to make stories about the return of the money which were not backed by even a shred of evidence. These were obviously self-serving arguments and were found to be false by the honourable ITAT. It is obvious that the appellant has deliberately filed inaccurate particulars of income and has clearly indulged in tax evasion. It is a well-planned strategy and the conduct of the appellant categorically reflects the intent and planning of tax evasion. It is therefore a fit case for levy of penalty and the same which has been levied by the assessing officer is hereby confirmed.”.

7. Aggrieved by the action of the CIT(A) in confirming the penalty levied by the AO, the assessee is in appeal before us raising the following grounds of appeal:

1. *The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.*

2. *The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in levying penalty u/s 271(1)(c) of the I.T. Act of Rs.6,05,880/- without considering the explanation submitted and inspite of the fact that the appellant has recorded all the business transactions properly in the books of account maintained and there is no concealment of its income or furnishing of inaccurate particulars.*

3. *The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that the penalty order was not passed within time allowed u/s 275 of the I. T. Act.*

7.1 The assessee filed a petition requesting for admission of the additional ground, which is as under:

“The initiation of proceedings u/s 271(1)(c) of the Income-tax Act, is not valid as the AO did not strike off the inappropriate portion of the notice. The AO ought to have struck off the

inappropriate portion and indicated to the appellant the applicable portion in the notice.”

8. As the said additional ground is a legal ground, wherein, the facts are on record and facts do not require fresh investigation, following the decision of Hon'ble Supreme Court in the case of National Thermal Power Co., Limited Vs. CIT 229 ITR 383 (SC), we admit the said additional ground of assessee.

9. The Id. AR of the assessee submitted that the Assessing Officer initiated the penalty proceedings by issue of a notice u/s 274 r.w.s. 271(1)(c) on 24.10.2011. He submitted that while issuing the said notice, the Assessing Officer did not mention whether the notice is issued for concealment of income or for furnishing of inaccurate particulars of income. Therefore, the notice is not validly issued. Consequently, the order passed u/s 271(1)(c) also is not valid. For this proposition, he relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs. SSA's Emerald Meadows, [2016] 73 taxmann.com 248 (SC).

10. The Learned Departmental Representative on the other hand relied on the orders of revenue authorities.

11. Considered the rival submissions and perused the material facts on record. The issue in dispute is squarely covered by the decision of the Hon'ble Supreme Court in the case of CIT Vs. SSA's Emerald Meadows, [2016] 73 Taxmann.com 248 (SC) wherein the Apex Court upheld the decision of the Hon'ble High Court, in which, the Hon'ble High Court confirmed the order of the Tribunal and dismissed the appeal of the revenue, who came in appeal against the order of the Tribunal. The Tribunal relying on a decision of Karnataka High Court in case of CIT Vs. Manjunatha Cotton & Ginning Factory, [2013] 359 ITR 565/210 allowed the appeal of the assessee holding that notice issued by Assessing Officer u/s 274 read with section 271(1)(c) was

bad in law, as it did not specify under which limb of section 271(1)(c) penalty proceedings had been initiated, i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars of income.

11.1 In the case under consideration, on perusal of the show cause notices issued by the Assessing Officer u/s 274 r.w.s. 271 of the IT Act, 1961, dated 31/12/2008 and 24/10/2011 it is seen that the Assessing Officer did not mention whether the notice is issued for concealment of income or for furnishing of inaccurate particulars of income. Therefore, as per the ratio laid down by the Hon'ble Supreme Court in the case of SSA's Emerald Meadows, the notice issued by the Assessing Officer is not valid and consequently, the order passed u/s 271(1)(c) is also not valid. Hence, we set aside the order of the CIT(A) and quash the order passed by the Assessing Officer u/s 271(1)(c) of the Act. Accordingly, the appeal of the assessee is allowed.

12. In the result, assessee's appeal is allowed.

Pronounced in the open court on 4th January, 2017.

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated:4th January, 2017

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Copy to:-

- 1) Sri Nilaya AR Projects, C/o Sri S. Rama Rao, Flat No. 102, Shriya's Elegance, H. No. 3-6-643, St. No. 9, Himayatnagar, Hyderabad – 500 029.
- 2) ITO, Ward – 8(1), Hyd.
- 3) CIT(A) - III, Hyderabad
- 4) CIT - II, Hyderabad
- 5) The Departmental Representative, I.T.A.T., Hyderabad.
- 6) Guard File

S.No.	Description	Date	Intls	
ds1.	Draft dictated on			Sr.P.S./P.S
2.	Draft placed before author			Sr.P.S/PS
3	Draft proposed & placed before the second Member			JM/AM
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9	Date of Dispatch of order			