

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

ITTA NO. 668 OF 2017

DATE: 01st NOVEMBER 2017

Between:

Principal Commissioner of Income Tax – II,
Visakhapatnam.

... Appellant

AND

Smt. Makina Annapurna

... Respondent

Counsel for the Appellant : Sri K. Raji Reddy,
Senior Standing Counsel
for IT Department

Counsel for the respondent :



THE COURT MADE THE FOLLOWING:

JUDGMENT: *(per Hon'ble Sri Justice Challa Kodanda Ram)*

This Appeal is preferred by the Revenue against the Order dated 02.02.2017 in I.T.A. No. 605/Vizag/2014 passed by the Income Tax Appellate Tribunal, Visakhapatnam Bench, Visakhapatnam (for short, 'the Tribunal'), for the Assessment Year 2008-09, raising the following substantial questions of law.

- 1) Whether, on the facts and circumstances of the case, the assessee having agreed for addition of concealed income after detecting thereof and filed return in response to notice under Section 148 offering additional income, assessee can escape from penalty under Section 271(1)(c) of the Income Tax Act?
- 2) Whether on the facts and circumstances of the case and in law, the Appellate Tribunal was justified in deleting the penalty levied under Section 271(1)(c) of the Act holding that the assessee had admitted income in respect of development agreement as soon as she came to know that she had to pay tax on development agreement which cannot be termed as concealment of particulars of income, more particularly when she is an illiterate lady not assessed to income tax in the earlier period.
- 3) Whether on the facts and circumstances of the case and in law, the Appellate Tribunal was justified in deleting the penalty relied upon the decision of Hon'ble High Court of Gujarat, in the case of Chhaganlal Suteriya v. ITO (2011) 337 ITR 350 holding that for the purpose of invoking the provisions of explanation 3 to Section 271(1)(c) of the Act, the conditions enumerated therein are required to be satisfied cumulatively i.e. although the Assessing Officer has issued a notice under Section 148 of the Act within the period specified under Section 153(1) of the Act, the third condition namely that no notice under Section 142(1) or 148 of the Act should have been issued within the period specified under Section 153(1) of the Act?

At the outset, it may be noted that this Appeal relates to AY 2008-09, question No.3, which was raised for the AY 2009-10 need not be answered. The present Appeal

deals with the decision of the Tribunal in relation to the relief granted to the assessee for the AY 2008-09.

The facts, in brief, are that, the assessee, an illiterate woman, owning 1272 square yards of urban property, had entered into a development agreement with M/s Kamal Builders. Under the said agreement, the assessee was entitled to 50% of the constructed area. The assessee, under the *bona fide* impression that she has given the property only for the purpose of development, did not file returns. However, pursuant to the survey undertaken in terms of Section 133-A of the Income Tax Act, 1961 (for short, 'the Act'), the assessee, on receipt of a notice under Section 148 of the Act, promptly filed returns for the AYs 2007-08, 2008-09 and 2009-10. For the AY 2008-09, the assessee had claimed exemption under Section 54-F of the Act on the four flats retained by her. In the Assessment proceedings, the AO had made additions to the extent of Rs.35,79,000/-. The assessee, though initially filed Appeal with respect to the additions, thereafter, to buy peace, withdrew the same, thus, the assessment became final. Penalty proceedings were initiated invoking Section 271 (1)(c) of the Act. The Commissioner of Income Tax (Appeals), in the process of considering the Appeals against the penalty proceedings, for

the Assessment Year 2009-10, categorically found that the assessee's case does not fall within the purview of Explanation 3 to Section 271 (c), in view of the fact that the notice under Section 148 of the Act was issued prior to the expiry of the stipulated period. To substantiate the said conclusion, the Appellate Commissioner, relied on the judgment in ***Chhaganlal Suteriya v. ITO***¹. The Appellate Authority confirmed levy of penalty by the AO for the AYs 2007-08 and 2008-09. While the Assessee filed Appeals bearing ITA Nos. 604 and 605 of 2014 for the AYs 2007-08 and 2008-09, the Revenue filed Appeal in relation to the AY 2009-10 bearing No. 625 of 2014. By the common order dated 02.02.2017, Appeal of the Revenue for the AY 2009-10 was dismissed and Appeals of the assessee for AYs 2007-08 and 2008-09 were allowed. The Revenue did not file any Appeal for the AY 2007-08 on account of the fact the amount involved in penalty proceedings is below the monetary limits notified under the CBDT Circular No. 21 of 2015, dated 10.12.2015.

Sri K. Raji Reddy, learned Standing Counsel appearing for the Revenue emphatically argues that the assessee had filed returns only after receipt of notice issued in the process of survey undertaken under Section 133-A of

¹ (2011) 337 ITR 350

the Act, hence, the fact that the assessee, being an illiterate lady, filed returns immediately on receiving the notice, cannot absolve her of the penalty proceedings in the light of the language employed in Section 271 (1)(c). He would also submit that *mensrea* cannot be pleaded so as to make applicable the provisions of Section 271 (1)(c). In those circumstances, he prays that the Appeal be allowed.

On a careful scrutiny of the order of the Tribunal and in the facts of the present case, We do not consider it necessary to issue notice to the assessee.

There is no dispute that the Tribunal recorded the finding that the assessee had filed returns bringing to the tax the income arising out of the development agreement entered into by her. There is no deliberate attempt on her part to conceal the particulars of income or furnishing of inaccurate particulars. For the subject AY, the assessee had initially claimed exemption, invoking Section 54-F of the Act, under a *bona fide* impression that she can retain four flats. The same is based on account of the law prevailing at that point of time and the judgment of Karnataka High Court in ***CIT Vs. Ananda Basappa***² and ***CIT v. K.G. Rukminiamma***³. As a matter of fact, it may be noted that,

² (2009) 309 ITR 329

³ (2011) 331 ITR 211

the above two judgments were followed by the High Court of Andhra Pradesh in ITTA No. 410 of 2012 (*CIT v. Syed Ail⁴*). In other words, the *bona fides* of the assessee in making a claim cannot be found fault with. It is well-settled that making a mere claim under a *bona fide* belief, which is subsequently not acceptable for the Revenue, cannot be a ground for levy of penalty under Section 271(1)(c) of the Act.

Yet another ground on which the Tribunal had allowed the Appeal is that while issuing notice, invoking Section 271(1)(c) of the Act, the AO had failed to put a right mark on the portion of the notice specifying whether the penalty of the proceedings had been initiated for concealing the particulars of income or for furnishing inaccurate particulars of such income. Now, it is well-settled that in the absence of any specification as to which portion of the notice issued under Section 217(c), the assessee is at loss, coming to a conclusion, which has the effect of depriving her of putting forward the defence for levying of penalty, entitles the assessee from relieving the pain of being penalized. While rejecting the argument of the assessee that the AO had not specified that this is the case warranting invocation of the penalty proceedings under Section

⁴ (2013) 352 ITR 418

271(1)(c), as a matter of fact, the Tribunal had recorded that in the notice, the AO had failed to specify the reasons for which penalty proceedings were initiated, i.e. whether it is for concealment of income or furnishing inaccurate particulars of income, thereby depriving the assessee to justify her case before the AO and thus, violating the principles of natural justice. This argument was accepted by the Tribunal. Even on that ground, the penalty proceedings were held to be unsustainable. In the facts of the present case, question No.2 is answered in favour of the assessee and against the Revenue. As there is no offering of additional income, question No.1 does not arise from the order of the Tribunal and hence, the same is not required to be answered.

The Appeal is therefore, dismissed. No costs.

C.V. NAGARJUNA REDDY, J

CHALLA KODANDA RAM, J

01st November 2017

ksld/dr

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

ITTA NO. 372 OF 2014

DATE: 7th NOVEMBER 2017

Between:

The Commissioner of Income Tax-I,
Hyderabad.

... Appellant

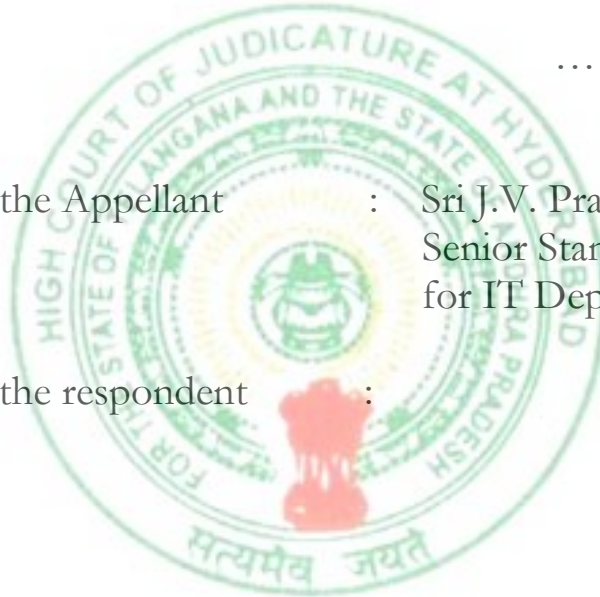
AND

M/s Andhra Bank,
Hyderabad

... Respondent

Counsel for the Appellant : Sri J.V. Prasad,
Senior Standing Counsel
for IT Department

Counsel for the respondent :



THE COURT MADE THE FOLLOWING: