

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE M.S.K.JAISWAL

ITTA.No.682 of 2017

Date:27.12.2017

Between.

Principal Commissioner of Income Tax,
Kurnool.

.....Appellant

And.

M/s Andhra Pradesh Garmeen Bank,
Kadapa.

.....Respondent

Counsel for the appellant: Mr. B.Narasimha Sarma

Senior Standing Counsel for IT Department

The Court made the following:

JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

The Revenue raised the following substantial questions of law in this appeal filed against order, dated 10.02.2017, in ITA.No.1051/Hyd/2016 on the file of the Income Tax Appellate Tribunal, Hyderabad 'B' Bench, Hyderabad:—

“1. In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is correct in law in upholding the cancellation of penalty levied under Section-271(1)(c) of the Income Tax Act, 1961 with an observation that it was only a technical error in the subject claim made by the respondent-assessee and the respondent-assessee has agreed for the said disallowance as soon as it realized its mistake in the claim, without due appreciation of material facts and reasons mentioned in the penalty orders of the Assessing Officer?

2. In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is correct in law in deleting the penalty under Section-271(1)(c) of the Income Tax Act on the ground that it was only a technical error by ignoring the binding decision of the Hon'ble Supreme Court of India in the case of Union of India Vs. Dharmendra Textile Processors (306 ITR 277) and Gujrat Industries Limited Vs. CTO (SC) {293 ITR 584} wherein it was held that *mensrea* is not essential for civil liability of penalty under fiscal statutes or for breach of civil liabilities?”

We have heard Mr. B.Narasimha Sarma, learned senior Standing Counsel for Income Tax Department, and perused the record.

The respondent-assessee is a bank having its operations in Kadapa District. Under Section-36(1) (viii) of the Income Tax Act, 1961 (for short 'the Act'), deduction of advances given to its rural branches by the respondent is allowable. Under the said provision, a branch is treated as a rural branch if the population of the area in which it is located is less than 10,000. Based on the certificate regarding the population issued by the Village Head-a revenue officer, the respondent has treated certain branches as rural branches and accordingly, filed its returns by not including the advances given to its rural branches under the head 'income'. However, when a notice was issued by the Assessing Officer (AO), based on the census figures, the respondent has filed revised returns by including the advances under taxable income and also paid the tax according to the revised returns. The AO has imposed a penalty of Rs.1 crore on the respondent under Section-271(1)(C) of the Act for wrongly claiming deduction of the advances given to its branches, which do not fall within the description of rural branches. The Commissioner of Income Tax (Appeals), Kurnool allowed the appeal filed by the respondent by recording the finding that during the course of scrutiny proceedings, when it was pointed out to the respondent that it has not computed the bad and doubtful debts @ 10% of average rural advances made by

certain rural branches, the latter has filed revised returns and rectified the *bona fide* mistake. The Commissioner (Appeals) termed the action of the respondent as purely a technical error on an erroneous calculation as per the standard procedure adopted by the Revenue authorities, instead of relying upon the latest census. He has recorded a further finding that there was no *mens rea* or guilty mind on the part of the respondent to conceal the tax. The Tribunal, on the appeal filed by the Revenue, concurred with the view of the Commissioner (Appeals).

Having carefully considered the facts and circumstances of the case, we are of the opinion that the reasons assigned by both the *fora* below are not only convincing but also rational, which do not warrant any other view by us in the present appeal.

In the light of the above, the substantial questions of law framed by the Revenue are answered against it. The appeal is, accordingly, dismissed.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

27th December 2017

DR