

**HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**

INCOME TAX TRIBUNAL APPEAL NO.224 OF 2007

JUDGMENT: *(per Hon'ble Sri Justice Laxmi Narayana Alishetty)*

The present appeal has been filed under section 260-A of Income Tax Act, 1961 (for short, the "Act") assailing the order passed by Income Tax Appellate Tribunal, Bench-B, Hyderabad (for short "Tribunal") in ITA No.649/Hyd/03, dated 29.12.2006 for the Assessment Year 1998-99. Vide impugned order, dated 29.12.2006, the Tribunal dismissed the appeal filed by the appellant by observing that the appellant failed to satisfactorily explain the income and thereby confirmed the order of the Commissioner of Income Tax (Appeals)-II, Hyderabad [for short, CIT(A)] and levied penalty under Section 271(1)(c) of the Act.

2. Heard learned counsel Ms. K.Neeraja for the appellant and the learned standing counsel Ms. B.Swapna Reddy for the respondent.

3. The brief facts leading to filing of present appeal are as under:

4. The appellant-firm is engaged in the business of exhibition and distribution of films. The appellant filed return on 31.10.1998

for the assessment year 1998-99, thereby declaring the total income of Rs.69,940/-. Survey operation was conducted on 18.12.1998 under Section 133-A of the Act and consequently, appellant filed revised return declaring total income of Rs.5,79,940/-. The said return was initially processed under Section 143(1)(a) of the Act and later, the same was converted into scrutiny by issuing notice under Section 143(2) of the Act.

5. During the course of scrutiny, the appellant was asked to explain difference between the figures obtained from the profit and loss account annexed to the return of income and printouts taken from the computer available in the business premises of the appellant, which was found during survey operations. In the profit and loss account filed along with return, the gross receipts shown to a tune of Rs.66,31,340/- as against sum of Rs.66,18,041/- was claimed as expenditure, thereby showing a net profit of Rs.15,298/-. However, as per the profit and loss account obtained from the computer, the total receipts were to a tune of Rs.84,99,708/- as against expenditure of Rs.67,24,420/- and thus, the net profit was worked out to Rs.17,75,279/-.

6. The Assessing Officer (A.O.) issued notices from time to time seeking clarification from the appellant with regard to gross receipts declared in the computerized profit and loss account. The

appellant vide its letter dated 16.03.2001 admitted the profit and loss account found during the survey. The A.O. proceeded further and completed the assessment taking into consideration the profit and loss account from the computer at the time of survey. Thus, the A.O., made an addition of Rs.8,86,984/-. Further, the A.O., also initiated penalty proceedings under Section 271(1)(c) of the Act. In response to the penalty notice, the appellant again contended that they were not aware as to how the accountant maintained the accounts and though all the information regarding the transactions of the business was furnished to the accountant, he admits to have forgotten to enter certain entries regarding to certain expenditure incurred by the firm.

7. The A.O. further observed that the statements of the assessee are self-contradictory. On one hand, the appellant admits the correctness of the receipts shown in the computerized profit and loss account, but claims that certain expenditure was not entered at that time and in fact, claimed additional expenditure of Rs.3,01,605/-, which was accepted in the assessment order and thus, the further difference is only on account of concealment of income and therefore, the A.O. levied a minimum penalty of Rs.3,09,307/-, vide his order dated 28.09.2001.

8. Aggrieved by the order dated 28.09.2001, the appellant filed appeal before the first appellate authority contending that the penalty was levied only on the basis of findings given in the assessment order without bringing anything on record to prove that the assessee has concealed the income or furnished inaccurate particulars. The appellant further contended that the explanations given by the assessee were not considered properly by the A.O., with regard to the profit and loss account obtained from the computer of the accountant and that only to purchase peace with the Department, the appellant agreed to the additions.

9. The appellant filed rectification petition on the ground that an amount of Rs.2,34,267/- was added to the total income treating it as stock in trade and therefore, claimed deduction under Rule 9B. The said petition was allowed vide order dated 19.12.2002 and the total income was determined at Rs.12,29,262/-.

10. The first appellate authority observed that in view of Explanation (1) to Section 271(1)(c) of the Act, upon making an addition a presumption of concealment is an automatic. That it is for the assessee to adduce evidence to the satisfaction of the A.O. to the effect that that it is not the concealed income or the explanation given by him is a *bona fide* and all the facts relating to

the same and material for the computation of the total income has been fully disclosed by the assessee.

11. The first appellate authority further observed that the assessee has not furnished any explanation as to how the additional income arose. Further contention of the appellant that the trial balance etc. prepared by the accountant was found to be false by the A.O. The first appellate authority held that the assessee has not discharged the burden cast upon it to prove to the satisfaction of the A.O., the income earned by it from business of exhibition of films and thus, confirmed the penalty order of the A.O. vide its order dated 10.01.2003.

12. Aggrieved by the order of first appellate authority, dated 10.01.2003, the appellant filed appeal before the Income Tax Appellate Tribunal (for short, 'ITAT'), vide I.T.A.No.649/H/2003. The appellant reiterated all the contentions which were taken before the first appellate authority and further contended that before initiating penalty proceedings, the A.O. has to record his satisfaction that there was concealment of income and in the instant case, the A.O., has not recorded such satisfaction in the assessment proceedings and thus, initiation of the proceedings without recording requisite satisfaction is bad in law.

13. The ITAT after careful consideration of the contentions raised on behalf of the appellant and also material placed before it, dismissed the appeal, which is now under challenge.

14. The learned counsel for the appellant during the course of hearing submitted that the printouts taken during the survey operation from the computer available at the premises of the appellant were not that of the appellant and further contended that the accountant was also working for other firms. It is further contended that only to purchase peace and to avoid protracted enquiry and litigation, the appellant accepted the assessment of the A.O. to a tune of Rs.8,86,984/-.

15. The appellant further contended that during the assessment proceedings, the A.O., wanted the appellant to reconcile the difference between the two accounts and while completing the assessment, the A.O. did not consider all the expenditure and allowed deduction in respect of partial expenditure, resulting in determination of total income at Rs.14,63,674/- as against the returned income of Rs.5,79,940/-.

16. The learned counsel further contended that the detailed explanation submitted by the appellant was not considered by the A.O., and that initial burden is on the revenue. However, revenue

failed to prove that the difference between the income returned and income assessed as the concealed income and the A.O., has to record his satisfaction before initiating the penalty proceedings and in the present case, the A.O. failed to record the same. It is finally contended that the first appellate authority as well as appellate tribunal is not justified in rejecting the contention of the appellant and therefore, finally prayed to allow the appeal.

17. Learned counsel for the appellant had relied upon the following decisions:

(i) **Chennakesava Pharmaceuticals vs. Commissioner of Income-Tax**¹;

(ii) **Commissioner of Income-Tax, Vijayawada vs. Lotus Constructions**²;

(iii) **Principal Commissioner of Income Tax (Central) vs. Golden Peace Hotels and Resorts (P) Ltd.**,³

18. *Per contra*, learned standing counsel for the respondent would submit that the appellant itself admitted to the profit and loss account taken from the computer during the survey operation and further, the appellant failed to provide any satisfactory explanation with regard to huge difference of gross income declared by the assessee and the income shown in the profit and loss account during the survey.

¹ (2013) 30 Taxmann.Com 385 (AP)

² (2015) 55 Taxmann.com 182 (AP)

³ (2021) 124 Taxmann.com 249 (SC)

19. She further contended that first appellate authority as well as Appellate Tribunal clearly observed that before initiating penalty proceedings, the A.O., had carefully considered the material and satisfied about the concealment of the income during the course of assessment proceedings and therefore, presumption in explanation (1) to Section 271 (1)(c) of the Act is attracted. She further contended that the burden is on the assessee to satisfactorily explain with regard to the huge difference of gross income, which the assessee failed and therefore, the A.O., is justified in initiating the penalty proceedings and prayed for dismissal of the appeal.

Consideration:

20. Perusal of the material, proceedings of the A.O., would clearly show that before initiating the penalty proceedings, A.O. had sought clarification/explanation from the assessee with regard to huge difference in gross income declared by the assessee with that of the income shown in the profit and loss account found during the survey operation. Further, the record also shows that the assessee failed to satisfactorily explain the huge difference of gross income. On the contrary, the appellant admitted the difference amounts and final assessment proceedings of the A.O., making an addition of Rs.8,86,984/-. Record also shows that the additions were made on the basis of the clear documentary

evidence found during the survey, which the appellant agreed and the evidence found during the survey was signed by the accountant as well as the Managing Partner of the appellant firm. Consequently, the AO issued the penalty proceedings under Section 271(1)(c) of the Act.

21. The appellant is aggrieved by the consequential penalty proceedings issued under Section 271(1)(c) of the Act by the A.O. and challenged the same before first appellate authority and thereafter, before the Appellate Tribunal, however, without any success.

22. The ITAT while dismissing the appeal had recorded the following conclusions/observations:

(i) though the assessee claimed that certain expenditure was not entered in the computerized accounts, his claim was limited to the expenditure of Rs.3,01,605/- and even after allowing the same, there is huge difference and this was brought out by the A.O. after exhaustive discussion, which implies that the A.O. was satisfied that the income returned by the assessee do not disclose the true and correct particulars and the differential amount was the concealed income of the assessee.

(ii) the assessee had admitted that he had carefully gone through the print outs and sat with his accountant to notice that the print outs taken were of their concern. The dispute was only with regard to the expenditure part, which was also limited to deduction of Rs.3,01,605/- and the assessee admitted the differential income and could not furnish valid explanation for the difference in the gross income.

(iii) Once it is assumed that the A.O., was satisfied about the concealment during the course of the assessment proceedings, the presumption in Explanation (1) to Section 271(1)(c) automatically arises when there is difference between the income returned and income assessed as held by the apex Court in the case of **CIT vs. K.P.Madhusudhan**⁴, the burden is on the assessee to prove that the addition made by the A.O. does not refer to the concealed income of the assessee. However, the assessee failed to provide satisfactory explanation.

23. The material on record shows that A.O., has provided reasonable opportunity to the petitioner and also sought clarification and having not satisfied with the explanation/clarification provided by the petitioner, the A.O., had passed the impugned order and recorded the reasons for his conclusion as

⁴ 251 ITR 99 (SC)

mentioned in the preceding paragraphs. The first appellate authority had also adverted to the contentions raised by the petitioner and on due consideration had confirmed the orders of the A.O.

24. The judgments relied upon by the appellants are distinguishable on facts and therefore, do not apply to the facts of the present case, since in those cases, the Hon'ble Court came to conclusion that the Assessing Officer neither satisfied nor there were findings for initiation of the penalty proceedings.

25. In view of above discussion, the contentions and grounds raised by the petitioner are devoid of merits and are contrary to material on record, more so, in the light of the reasons recorded and observations made by the A.O., the First Appellate Authority as well as the Appellate Tribunal.

Conclusion:

26. In view of the facts explained above and the legal position, the appellant failed to make out any case warranting interference of this Bench with the orders passed by the Income Tax Appellate Tribunal.

27. For all the aforesaid reasons, we are of the firm view that the questions of law raised by the appellant deserves to be decided in negative and thus, appeal deserves to be and is accordingly dismissed confirming the order of the Appellate Tribunal. There shall be no order as to costs.

28. Pending miscellaneous applications, if any, shall stand closed.

P.SAM KOSHY,J

LAXMI NARAYANA ALISHETTY,J

Date: 20.09.2023
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HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

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