

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

W.T.A.Nos.23-25/Viz/2017

(निर्धारण वर्ष / Assessment Years: 2008-09, 2010-11, 2011-12)

T.S.Kalyana Chakravarthy
Visakhapatnam

Vs.

Dy. Director of Wealth Tax
IT & TP, Visakhapatnam

[PAN : ACIPT3530G]

(अपीलार्थी / Appellant)

(प्रत्यर्थी / Respondent)

W.T.A.Nos.26-29/Viz/2017

(निर्धारण वर्ष / Assessment Years: 2008-09 to 2011-12)

T.S.Kanaka Rajesh
Visakhapatnam

Vs.

Dy. Director of Wealth Tax
IT & TP, Visakhapatnam

[PAN : ATAPT6495M]

(अपीलार्थी / Appellant)

(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G.V.N.Hari, AR

प्रत्यर्थी की ओर से / Respondent by : Shri P.S.Murthy, DR

सुनवाई की तारीख / Date of Hearing: 22.02.2018

घोषणा की तारीख / Date of Pronouncement : 23.02.2018

आदेश /O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

These appeals are filed by the assessee against the orders of the Commissioner of Wealth Tax (Appeals)-10, [CWT(A)] Hyderabad vide dated 31.03.2017 related to the penalty imposed u/s 18(1)(c) of Wealth Tax Act. Since the facts are identical and the issue involved is common in these appeals, they are clubbed, heard together and disposed of by this common order for the sake of convenience. The facts are extracted from WTA 23/Viz/2017 for the A.Y.2008-09.

2. In these appeals, wealth tax assessments were completed on net wealth of Rs.3,49,73,040/-. The assessee has taken loan of Rs.5,09,00,000/- for purchase of the asset from his wife and claimed the deduction from the value of the asset. Since both the assessee and the creditor are not residents, the AO relied on Circular No. 392[F.No.321/78/75-WT], dated 24.08.1984 and recomputed the net wealth rejecting the assessee's claim for deduction of loan taken from his wife amounting to Rs.5,09,00,000/-. The assessee went on appeal before the CWT(A) and the Ld.CWT(A), confirmed the addition made by the

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Assessing Officer(AO)and enhanced the net wealth by including the consideration paid for stamp duty, registration charges to the extent of Rs.1,65,50,915/-, thereby the value of the asset was determined at Rs.19,07,69,135/- against the value admitted by the assessee at Rs.13,06,80,000/- and the assessee's share of 1/3 enhancement worked out to Rs.2,00,29,711/-. The enhancement proposal was agreed by the Ld.AR. The Ld.CWT(A) initiated penalty u/s 18(1)(c) of Wealth Tax Act, issued show cause notice and imposed the penalty of Rs.2,05,000/- u/s 18(1)(c) of Wealth Tax Act.

3. Aggrieved by the order of the Ld.CWT(A), the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld.AR submitted that the value of the land was admitted at Rs.6,000/- per sq.yd as per Sub Registrar value which is correct and there was no understatement of the value as on date. As per the provisions of the Wealth Tax Act, the market value of the asset as on the date of valuation required to be admitted but not the cost of the asset. Therefore, submitted that the assessee had admitted the value of the asset correctly, hence argued that the enhancement is uncalled for and the consequent penalty is also unjustifiable. The addition was agreed by the Ld.AR only to purchase

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peace with the department and to avoid protracted litigation. The Ld.A.R also submitted that in the subsequent assessment years, the assessee had admitted the same value of Rs.4,35,60,000/- which was accepted by the department, hence argued that there is no case for penalty and the penalty imposed by the CWT(A) required to be cancelled. In the second proposition, the Ld.AR submitted that the Ld.CWT(A) has issued show notice u/s 18(1)(c), without striking the irrelevant column in the notice with regard to furnishing of inaccurate particulars or concealment of income. The Ld.AR submitted that the Ld.CWT(A) has issued notice u/s 18(1)(c) calling for the assessee's explanation stating that 'the assessee had concealed particulars of net wealth, furnished inaccurate particulars' but not made known the exact reason for initiating the penalty u/s 18(1)(c). Even CWT(A)'s appeal order does not indicate the correct reason for initiating the penalty u/s 18(1)(c), whether it is for concealment of net wealth or for furnishing of inaccurate particulars. The Commissioner simply written in the appeal order that the 'Penalty proceedings u/s 18(1)(c) are initiated without mentioning the reason in his order. The penalty order indicates that the penalty was initiated for furnishing of inaccurate particulars of net wealth as per para No.3.1. of the penalty order, whereas in the notice issued u/s 18(1)(c), the penalty was

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initiated for furnishing inaccurate particulars, concealment of net wealth which shows the confused state of mind of the Ld CWT(A) on issuance of notice without application of mind. Therefore, argued that the notice issued by the Ld.CWT(A) is defective and covered by Hon'ble Jurisdictional High Court in the case of Principal CIT Visakhapatnam Vs. Baisetty Revati in I.T.T.A No.684 of 2016 on identical facts and argued the penalty imposed by the Ld.CWT(A) is required to be cancelled.

4. On the other hand, Ld.DR relied on the orders of the CWT(A).

5. We have heard both the cases and perused the material placed on record. In this case, the Ld.CWT(A) has issued show cause notice without striking the irrelevant column. The first paragraph of the penalty notice reads as under :

“ whereas in the course of proceedings before me for the A.Y. 2008-09 it appears to me that you have concealed particulars of net wealth, furnished inaccurate particulars’ of such net wealth”.

In the appellate order the Ld.CWT(A) initiated penalty stating as under:

‘Penalty proceedings u/s 18(1)(c) of the WT act are initiated separately.’

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5.1. In para No.No.3.1 of the penalty order the Ld CWT(A) stated that the penalty was initiated for furnishing of inaccurate particulars of net wealth. Though from the penalty order it revealed that the CWT(A) has initiated the penalty u/s 18(1)(c) for furnishing of inaccurate particulars of net wealth, but both the CWT(A) order as well as the show cause notice does not indicate for which offence the penalty was initiated, whether for inaccurate particulars or concealment of income. Though the CWT(A) has issued the show cause notice stating that the assessee was required to explain the reasons for furnishing inaccurate particulars, concealment of wealth, it was not clearly made known for which offence the assessee is required to submit his explanation. The Ld.CWT(A) should have struck off the irrelevant column and made known the assessee by mentioning for which reason the penalty was initiated. Penalty u/s 18(1)(c) of WT Act are parimateria to Income Tax Act 271(1)(c). As per settled case laws non striking the irrelevant column in the notice issued u/s 18(1)(c) renders the notice invalid and consequent penalty required to be cancelled. On the similar facts with regard to penalty proceedings u/s 271(1)(c), this tribunal in the case of Gottumukala Satyanarayana in ITA No.229/Vizag/2015 dated 18.8.2017 cancelled the penalty levied u/s

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271(1)(c). For the sake convenience and clarity we extract the relevant part of the order hereunder:

8. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The A.O. made the addition of Rs.16,00,185/- to the returned income related to unexplained investment and imposed the penalty u/s 271(1)(c) of the Act. The penalty proceedings were initiated during the assessment proceedings but in the assessment order the AO has not made noting with regard to which offence the penalty was initiated i.e. for furnishing of inaccurate particulars or the concealment of income. We have gone through the penalty notice issued u/s 271 of the Act and the assessment order and it was noticed that the A.O. has not struck off the irrelevant column or made known to the assessee by mentioning for which offence, the penalty was initiated. As per the settled case laws, the A.O. has to make known the assessee for which reason the penalty was initiated and for which limb of the notice, explanation required to be submitted. Hon'ble jurisdictional High Court in the case of Principal CIT Visakhapatnam Vs. Baisetty Revati in I.T.T.A No.684 of 2016 dated 13.7.2017 held that the A.O. required to make known the specific ground for which the penalty has been initiated. For ready reference, we reproduce the relevant paragraph of the the Hon'ble High Court order made available in page nos.10 & 11, which reads as under:

"On principle, when penalty proceedings are sought to be initiated by the revenue under Section 271(1)(c) of the Act of 1961, the specific ground which forms the foundation there for has to be spelt out in clear terms. Otherwise, an assessee would not have proper opportunity to put forth his defence. When the proceedings are penal in nature, resulting in imposition of penalty ranging from 100% to 300% of the tax liability, the charge must be unequivocal and unambiguous. When the charge is either concealment of particulars of income or furnishing of inaccurate particulars thereof, the revenue must specify as to which one of the two is sought to be pressed into service and cannot be permitted to club both by interjecting an 'or' between the two, as in the present case. This ambiguity in the show-cause notice is further compounded presently by the confused finding of the Assessing Officer that he was satisfied that the assessee was guilty of both.

We are therefore of the opinion that the order under appeal

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does not brook interference on any ground. We find no question of law, much less a substantial one, arising for consideration warranting admission of this appeal.

The appeal is accordingly dismissed. No order as to costs.”

9. On similar facts, this Tribunal in the case of *M/s. Narayana Reddy Enterprises, Mandapeta Vs. ITO Ward-1, Kakinada* in ITA No.229/Vizag/2015 dated 18.8.2017 also held that the notice issued u/s 271 of the Act without striking irrelevant column is invalid and consequent penalty was cancelled by this Tribunal. In the instant case, the facts are identical and the case is squarely covered by the Hon'ble jurisdictional High Court judgement and the decision of this Tribunal cited (*supra*). Therefore, we hold that the penalty notice issued u/s 271 of the Act is invalid and the consequent penalty is unsustainable. Accordingly we set aside the orders of the lower authorities and cancel the penalty.

5.2. Since the facts are identical, and the penalty u/s 18(1)(c) of WT Act are *parimateria* to section 271(1)(c) we hold that the penalty notice issued u/s 18(1)(c) is invalid and consequent penalty is unsustainable. Accordingly, we set aside the orders of the CWT(A) and cancel the penalty imposed u/s 18(1)(c) of WT Act.

6. Since we have held the notice issued u/s 18(1)(c) is invalid, we consider it is not necessary to adjudicate the case on merits.

7. In the result, the appeals filed by the assesseees are allowed.

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The above order was pronounced in the open court on 23rd Feb
2018.

Sd/-
(वी.दुर्गराव)
(V. DURGA RAO)
न्यायिकसदस्य/JUDICIALMEMBER
विशाखापटणम /Visakhapatnam
दिनांक /Dated : .02.2018

Sd/-
(डि.एस. सुन्दरसिंह)
(D.S. SUNDER SINGH)
लेखासदस्य/ACCOUNTANT MEMBER

L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellants- Sri T.S.Kalyana Chakravarthy and Shri T.S.Kanaka Rajesh, C/o Smt.C.S.Padmavati, D.No.10-27-14/A, Kailashmetta, Siripuram, Visakhapatnam
2. The Deputy Director of Wealth Tax (IT & TP), Visakhapatnam
3. The Commissioner of Wealth Tax (IT&TP), Hyderabad
4. The Commissioner of Wealth Tax (Appeals)-10, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

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Sr. Private Secretary
आदेशानुसार / BY ORDER