

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B" : HYDERABAD  
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**I.T.A. No. 55/HYD/2019**  
Assessment Year: 2015-16

Suray Sriharsha,  
Madanapalle  
[PAN: AERPS2718C]

Vs

The Asst. Commissioner  
of Income Tax  
Circle-1(1),  
Tirupati

(Appellant)

(Respondent)

For Assessee : Shri S.Rama Rao, AR  
For Revenue : Shri Rohit Mujumdar, DR

Date of Hearing : 17-02-2021  
Date of Pronouncement : 17-03-2021

**ORDER**

**PER S.S.GODARA, J.M. :**

This assessee's appeal for AY.2015-16 arises from the CIT(A)-Tirupati's order dated 19-11-2018 passed in appeal No.10014/2018-19/CIT(A)/TPT in proceedings u/s.271(1)(c) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both parties. Case file perused.

2. The assessee's sole substantive grievance canvassed in the instant appeal seeks to reverse both the lower authorities' action imposing Section 271(1)(c) penalty of Rs.19,15,424/- on account of alleged furnishing of inaccurate particulars of

income. The CIT(A)'s detailed discussion to this effect reads as under:

*"4. The appeal is filed against levy of penalty of Rs.19,15,424/- u/s.271(1)(c) of the I.T. Act, for concealing particulars of income of Rs.63,84,746/-. The facts of the case that the appellant, in the computation of income, had set off of loss on shares of AY 2013-14 of Rs.63,84,746/- against the current income from sale of shares and securities amount to Rs.69,07,287/-. However, the return of income for AY 2013-14 has been filed on 10.2.2014 as against due date for such filing on 31.10.2013. As per the provisions of Sec.139(3) of the I.T. Act, 1961, no loss or any part thereof is allowed to be carried forward, if the return of income or loss is not furnished before the due date for filing such return. Accordingly, an amount of Rs.63,84,746/- which is brought forward of AY 2013-14, and set off against the current years income is disallowed in the order of assessment for AY 2015-16, vide order dated 14.12.2017. Penalty proceedings were initiated u/s.271(1)(c) for furnishing inaccurate particulars of income of Rs.63,84,746/-. Thus, the penalty was levied of Rs.19,15,424/- u/s.271(1)(c) for furnishing inaccurate particulars of income. The contention of the AR of the appellant during the course of appellate proceedings was that the claim of loss of set off was not intentional and it was a routine claim from the previous records. The contention raised by AR of the appellant is not acceptable. The set off of loss which was not allowable as per the law against the current income cannot be treated as unintentional Act. Against the earning of huge income, the appellant sought to claim for set off loss which is not allowable as per law. Had there been no scrutiny assessment, the appellant could have got away from payment of taxes. The appellant was forced to accept the false claim in the return of income only when the issue was confronted with the assessee during the course of assessment proceedings completed vide order dated 14.12.2017. Hence, it is a clear case of furnishing inaccurate particulars of income with a deliberate attempt to conceal the income and evade the appropriate taxes. Hence, I confirm the levy of penalty".*

3. We have given our thoughtful consideration to rival pleadings against and in support of the impugned penalty. The Revenue's only case before us; in tune with the CIT(A)'s above detailed discussion, is that the assessee had claimed brought forward loss of Rs.63,84,746/- by filing its return of income beyond the due date prescribed under the Act. We find

no reason to concur with the same. The fact remains that the department is very fair in not disputing the actual figures of assessee's brought forward loss of Rs.63,84,746/- which has been disallowed only for the reason of belated filing of return. Hon'ble apex court's landmark decision in CIT Vs. Reliance Petroproducts P. Ltd., [322 ITR 158] (SC) has settled the law that quantum and penalty are parallel proceedings wherein each and every disallowance / addition made in case of the former does not *ipso facto* attract the latter penal provision. We thus reiterate the assessee's fact of its first brought forward loss figures not incorrect to hold that both the lower authorities have erred in law and on facts in imposing the impugned penalty of Rs.19,15,424/-. The same is directed to be deleted.

4. This assessee's appeal is allowed.

*Order pronounced in the open court on 17<sup>th</sup> March, 2021*

Sd/-  
**(LAXMI PRASAD SAHU)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 17-03-2021

*Copy to :*

*1.Suray Sriharsha, H.No.14-484-A, Gandhi Road, Madanapalle, Chittoor Dist., A.P.*

*2.The Asst.Commissioner of Income Tax, Circle-1(1), Tirupati.*

*3.CIT(Appeals)-Tirupati.*

*4.Pr.CIT-Tirupati.*

*5.D.R. ITAT, Hyderabad.*

*6.Guard File.*

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