



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

**BEFORE S/SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA Nos.08 & 09/CTK/2021**

Assessment Years : 2010-2011 & 2011-12

M/s. Sarada Nivas Pvt Ltd., At:Plot No.1425, Bank Street, Jajpur Road, jajpur	Vs.	ACIT, Circle -1(1), Cuttack
PAN/GIR No.AAHCS 7409 P		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.K.Mishra , AR  
Revenue by : Shri Sovesh Chandra Mohanty, Sr (DR)

**Date of Hearing : 09/3/ 2022**  
**Date of Pronouncement : 09 /3/2022**

**ORDER**

**Per C.M.Garg, JM**

These are appeals filed by the assessee against the order of the CIT(A), Cuttack both dated 31.7.2018 for the assessment years 2010-2011 & 2012-12, respectively .

2. In both the appeals, the grievance of the assessee is that the Id CIT(A) is not justified in passing exparte order by confirming the penalty imposed of Rs.5,52,189/- for the assessment year 2010-2011 and 11,66,985/- for the assessment year 2011-12, respectively.

3. Facts of both the case are identical, therefore, they were clubbed together and disposed of by way of this common order. Hence, we take up

adjudication the appeal for assessment year 2010-2011 and decision will apply mutatis mutandis to the assessment year 2011-12.

4. The assessee is a company registered under the Companies Act and is engaged in Hotel and catering business. The assessment was completed u/s.143(3)/147 of the Act on 30.3.2014 determining total income at Rs.17,90,110/- raising a tax demand of Rs.5,52,189/-. The assessee company had failed to pay the admitted self assessment tax of Rs.5,52,189/- after considering the prepaid of TDS of Rs.955 before the date of filing of return in accordance with section 140A(1) of the Act. Thereafter, penalty proceedings u/s.140A(3) of the Act was initiated by issuing notice u/s.221(1) of the Act. Since the directors of the assessee company were busy in arranging funds for liquidation of bank loans, no appearance was made by the assessee during the penalty proceedings. Accordingly, the AO imposed penalty of Rs.5,52,189/-u/s.221(1) of the Act.

5. On appeal, the Id CIT(A) upheld the penalty imposed by the Assessing Officer on the ground that there was no compliance before him without considering the case on merits.

6. At the time of hearing, Id A.R. of the assessee during the year under consideration, the assessee was facing severe financial stringency due to recovery proceedings initiated against the assessee company by the bank towards the recovery of secured loans. Ld A.R. submitted that the directors

were busy in arranging funds to clear the bank loans and, therefore, could not appear before the AO during the penalty proceedings. Ld A.R. submitted that due to financial difficulties, the assessee could not deposit the admitted tax in due time. However, despite the financial crunch, the assessee had paid the admitted tax of Rs.5,52,182/- on 7.4.2017 for the assessment year 2010-11 vide challan No.02964 and Rs.11,70,985 (Rs.1,84,830/- on 30.3.2017 vide challan No.00131 and Rs.9,82,155 on 7,4.2017 vide challan No.2622). Ld A.R. produced a copy of order dated 17.2.2017 of ITAT Mumbai 'A' Bench in the case of Life Time Realty Pvt Ltd vs DCIT (2017) 79 taxmann.com 230 (Mumbai –Trib) and contended that under similar situation, penalty imposed u/s.221(1) of the Act was deleted. Ld A.R. submitted that the issue is covered in favour of the assessee.

6. Replying to above, Id SR DR supported the penalty order. He submitted that since the assessee failed to pay the admitted tax before filing the return of income, the AO is justified in levying the penalty. Ld DR submitted that before the Id CIT(A) also, assessee did not bother to appear to putforth its case, therefore, the CIT(A) has rightly confirmed the penalty.

7. On careful consideration of the rival submissions, we observe that since the assessee company had failed to pay the self assessment tax of Rs.5,52,189/- and prepaid taxes of Rs.955/- u/s.140A(1) of the Act, the Assessing Officer imposed penalty of Rs.5,52,189/- u/s.221(1) of the Act. The Id CIT(A) also confirmed the penalty because of non-appearance from

the side of the assessee without considering the case on merits. Before us, Id A.R. submitted that though before filing the return of income, the assessee failed to pay the admitted tax due to financial crunch, but later on has paid the tax to the Income tax Department. The above contention of the assessee was not controverted by Id Sr DR. Even there was no instance that the assessee was in default in past in paying the admitted tax. We find that under similar situation, the Mumbai Tribunal in the case of Life Time Realty Pvt Ltd(supra) has deleted the penalty levied by the AO u/s.221(1) of the Act. No other contrary decision was filed by the Id Sr DR. We find that the assessee despite the financial crunch, the assessee had paid the admitted tax of Rs.5,52,182/- on 7.4.2017 for the assessment year 2010-11 vide challan No.02964 and Rs.11,70,985 (Rs.1,84,830/- on 30.3.2017 vide challan No.00131 and Rs.9,82,155 on 7,4.2017 vide challan No.2622). Therefore, respectfully following the decision of Co-ordinate Bench in the case of Life Time Realty Pvt Ltd (supra), we set aside the orders of lower authorities and delete the penalty of Rs.5,52,189/- and Rs.11,66,985/- imposed under section 221(1) of the Act for the assessment year 2010-11 and 2011-12, respectively.

9. In the result, both the appeals of the assessee are allowed.

Order pronounced on 9/3/2022.

Sd/-  
**(Arun Khodpia)**  
**ACCOUNTANT MEMBER**

sd/-  
**(Chandra Mohan Garg)**  
**JUDICIAL MEMBER**

Cuttack; Dated 9 /03/2022

B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant :M /s. Sarada Nivas Pvt Ltd.,  
At:Plot No.1425, Bank Street, Jajpur Road, jajpur
2. The Respondent. ACIT, Circle -1(1),  
Cuttack
3. The CIT(A)-, Cuttack
4. Pr.CIT-, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**