

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्रीदुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपील सं./I.T.A. No. 18/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2012-13)**

N R Constructions 2-59-7, Shanthi Nagar Kakinada – 533003 Andhra Pradesh [PAN : AABFN7969A]	v.	ACIT – Circle – 1 Kakinada
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व / Assessee Represented by	:	Ms. Keerthana, AR
राजस्व का प्रतिनिधित्व / Department Represented by	:	Dr. Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि / Date of Conclusion of Hearing	:	12.08.2024
घोषणा की तारीख/Date of Pronouncement	:	05.09.2024

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against the order of Learned Commissioner of Income Tax (Appeals), NFAC, Delhi [hereinafter in short "Ld.CIT(A)"] vide DIN & Order No. ITBA/NFAC/S/250/2023-

24/1058342735(1) dated 30.11.2023 for the A.Y. 2012-13 arising out of the penalty order passed under section 271(1)(c) of Income Tax Act, 1961 (in short 'Act') dated 25.03.2022.

2. Brief facts of the case are that, assessee is in the business of construction works filed his return of income admitting the total income of Rs. 22,10,162/-. The return was summarily processed under section 143(1) of the Act. Subsequently, the case was selected for scrutiny and the assessment was completed on 04.03.2015 under section 143(3) of the Act. While framing the assessment the Assessing Officer considered that the assessee has claimed huge labour expenditure amounting to Rs.2,89,09,008/- and found that these payments are made in cash with no supporting vouchers or bills. Therefore, the Assessing Officer estimated 8% on amount of gross contract receipts while framing the assessment. The matter was carried before Ld.CIT(A) who directed the Assessing Officer to disallow 10% of labour expenses instead of taking 8% as profit on the total receipts. Further aggrieved, the matter was carried before the ITAT Tribunal, Visakhapatnam Bench. The Tribunal confirmed the order of the Ld.CIT(A). Subsequently, penalty proceedings were initiated under section 271(1)(c) of the Act by the

Assessing Officer thereby levying the penalty of Rs. 8,93,288/- vide order dated 25.03.2022 passed under section 271(1)(c) of the Act.

3. Aggrieved by the penalty order, assessee filed appeal before Ld.CIT(A). Ld. CIT(A) by relying on various decisions as detailed in his order confirmed the penalty levied by the Assessing Officer.

4. Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before us by raising following grounds of appeal: -

1.	On the facts and Circumstances of the case the order passed of Hon'ble CIT(A) is erroneous both on facts and in law. The Ld. CIT(A) ought to have annulled the penalty proceedings u/s 271(1)(c) of the Act amounting to INR Rs.8,93,288, as the appellant has neither concealed any income nor furnished any inaccurate particulars of income.
2.	The Ld. CIT(A) ought to have appreciated the fact that the notice issued under section 271 (I is bad in law as the Assessing Officer has not specified under which limb of said section penalty proceedings had been initiated, i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. The Ld. CIT(A) ought to have appreciated the fact that even in the order, it was mentioned that the assessee has concealed income and furnishing inaccurate particulars instead of specifying the limb of said penalty proceedings.
3.	Without prejudice, the Ld. CIT(A) erred in not appreciating the fact that, the Ld. AO in the order mentioned that penalty is imposed for furnishing inaccurate particulars of income and satisfaction by virtue of explanation 1 to Sec 271(1) of the Act, without appreciating the fact that Explanation 1 could be invoked only if there is a concealment of income and not furnishing of inaccurate particulars.
4.	The Ld. CIT(A) ought to have appreciated the fact that the penalty proceedings u/s 271(I)(c) of the Act is unsustainable in absence of recording of satisfaction by the Ld. AO. The Ld. CIT(A) ought to have appreciated the fact that the Ld. AO has erred in passing a non- speaking order, without giving a clear finding on the facts, merits of reply and applicability of provision of Sec 271(1) of the Act, read with explanation 1 thereof.
5.	The Ld. CIT(A) erred in not considering the fact that the disallowance of 10% of labour expenses on estimation basis doesn't amount to concealment of particulars of income nor furnishing of inaccurate particulars of income.
6.	The Ld. CIT(A) ought to have appreciated the fact that penalty u/s 271(1)(C) is not leviable in the matter of bonafide difference of opinion between the assessee and the department regarding allowability of the claim.

7.	The Ld. CIT(A) ought to have appreciated the fact that the assessee has not gone for further appeal before Honourable High court on disallowance made on estimation basis to purchase peace of mind.
8.	The Ld. CIT(A) ought to have appreciated the fact that disallowance of certain expenditure on estimated basis on some notional basis is neither the concealment of income particulars of income nor furnishing of inaccurate particulars as such.
9.	The Ld. CIT(A) ought to have appreciated the fact that disallowance of expenses will not per se amount to furnishing inaccurate particulars of income or , merely because the assessee had claimed expenditure which claim was not accepted or was not acceptable to revenue, that by itself would not attract penalty u/s 271(1)(c)of the Act.
10.	The Ld. CIT(A) erred in levying penalty u/s 271(I)(c) of the Act as penalty cannot be levied merely because the assessee has accepted the disallowance made on estimation basis as there is no deliberate attempt to conceal income or to furnish inaccurate particulars of income.
11.	The assessee may add, alter, or modify or substitute any other points to the grounds of appeal at any time before or at the time of hearing of appeal.

5. Ld. Authorised Representative [hereinafter "Ld.AR"] in his written statements has stated that the Assessing Officer has not levied penalty by stating that whether it is for concealment of particulars of income or for furnishing of inaccurate particulars of income. Further he also argued before us that when the income is estimate or expenditure is disallowed on estimation basis no penalty can be leviable under section 271(1)(c) of the Act. On this proposition, he relied on the following case laws: -

- i. CIT v. U.P. State Bridge Corporation Ltd., [2018] 97 taxmann.com 279 (SC).*
- ii. PCIT v. Torque Pharmaceuticals Ltd., [2017] 81 taxmann.com 283 (P & H).*

- iii. *ACIT v. Vision Research & Management Ltd., [2015] 63 taxmann.com 8 (Lucknow – Trib)*
- iv. *Potluri Phanendra Babu v. ITO in ITA No. 241 & 242/VIZ/2022 dated 10.08.2023.*
- v. *CIT v. Sangrur Vanaspati Mills Ltd., [2008] 171 Taxman 320 (P & H).*

6. Per contra, Ld. Departmental Representative [hereinafter in short “Ld. DR”] heavily relied on the orders of the Revenue Authorities.

7. We have heard both the sides and perused the material available on record and the case laws cited by the Ld.AR. Admittedly the addition is based on estimation by the Assessing Officer which was later again estimated by the Ld.CIT(A) to disallow 10 percentage of expenditure while adjudicating the quantum appeal. It is also not disputed that assessee has furnished details regarding expenditure as well as income in the return of income. The disallowance by the revenue is due to the fact that it was not acceptable to the revenue. The Hon’ble Supreme Court in the case of *CIT v. UP State Bridge corporation Ltd., (supra)* held that where assessee had furnished certain details regarding expenditure as well as in in return, which were not found inaccurate, nor could be viewed as concealment of income on part of assessee, merely because said claim was not accepted or was not acceptable by the revenue, that by itself would not attract penalty under section 271(1)(c) of the Act.

Further this Tribunal in the case of Potluri Phanendra Babu v. ITO (supra)

held as follows: -

"5. Since the addition is made on estimate basis, various judicial pronouncements have held that penalty cannot be levied when the addition is estimated. We therefore find that the levy of penalty based on the addition made by an estimate cannot be a valid ground and hence it should be deleted. It is ordered accordingly."

8. Respectfully following the above judicial precedents, and principle of consistency, we are of the view that no penalty can be levied in the case where the disallowance expenditure is estimated and therefore, we are inclined to delete the penalty levied by the Assessing Officer. Ground Nos. 8 to 10 are allowed.

9. Since Ground Nos. 8 to 10 are adjudicated in favour of the assessee the adjudication of other grounds is merely academic in nature.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 05th September, 2024.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated :. 05.09.2024

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य /ACCOUNTANT MEMBER

आदेश की प्रति लिपिअग्रेषित / **Copy of the order forwarded to :-**

1. निर्धारिती / The Assessee : N R Constructions
2-59-7, Shanthi Nagar
Kakinada – 533003
Andhra Pradesh
2. राजस्व / The Revenue : ACIT – Circle – 1
Kakinada
3. The Principal Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्ड फ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam