

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

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

**श्री दुव्वुरु आरएल रेड्डी, उपाध्यक्ष एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE VICE-PRESIDENT**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.Nos.344 & 345/VIZ/2024
(निर्धारण वर्ष/ Assessment Years: 2015-16 2016-17)**

CH Rama Rao 4-99, Ramavarappadu Vijayawada – 521108 Andhra Pradesh [PAN: AACFC0545L]	v.	Income Tax Officer - Ward – 3(4) C.R. Building Vijayawada- 520002 Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri C. Subrahmanyam, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	17.12.2024
घोषणा की तारीख/Date of Pronouncement	:	28.01.2025

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. These appeals are filed by the assessee against different orders Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short "Ld.CIT(A)"] vide respective DIN & Order No. as stated below: -

ITA No. & A.Y.	DIN & Order No.	Dated
ITA No. 344/VIZ/2024 (A.Y. 2015-16)	ITBA/NFAC/S/250/2024-25/1066345254(1)	02.07.2024
ITA No. 345/VIZ/2024 (A.Y. 2016-17)	ITBA/NFAC/S/250/2024-25/1066345382(1)	02.07.2024

2. Since the issue raised by the assessee for both the appeals are identical in nature, these appeals are clubbed and a consolidated order being passed. We now take up the appeal in ITA No. 344/VIZ/2024 for the A.Y.2015-16 as a lead appeal.

ITA No. 344/VIZ/2024 (A.Y. 2015-16)

3. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short “Ld.CIT(A)”] vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1066345254(1) dated 02.07.2024 for the A.Y.2015-16 arising out of order passed under section 271(1)(c) of the Income Tax Act, 1961 (in short ‘Act’) dated 27.01.2022.

4. Brief facts of the case are that, assessee is a partnership firm filed its original return of income for the A.Y. 2015-16 admitting a total income of Rs.3,84,690/- from the business of running a petrol bunk. The assessment was reopened by issuing notice under section 148 of the Act and accordingly statutory notice under section 142(1) of the Act was issued and served on the assessee. During the re-assessment proceedings, Ld. Assessing Officer

[hereinafter in short "Ld. AO"] noticed that the capital A/c of the Managing Partner reflected the debit balance of Rs. 2,01,88,975/- and found that the assessee has obtained loan from ICICI Bank having a closing balance of Rs.2,80,25,879/-. Ld. AO therefore observed that assessee has claimed interest on the loan in the hands of the firm, whereas the funds have been utilised by the Managing Partner. Therefore, the Ld. AO proceeded to disallow the proportionate interest claimed by the assessee which was also accepted by the assessee. Ld. AO thereafter initiated penalty proceedings under section 271(1)(c) of the Act by observing that assessee has concealed particulars of income and thereafter proceeded to levy penalty of Rs.2,07,318/-.

5. Aggrieved by the order of the Ld. AO, assessee filed an appeal before Ld. CIT(A). The Ld. CIT(A) considering the submissions not found to be acceptable dismissed the appeal of the assessee.

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

"1. That under the facts and circumstances of the case, the order passed u/s.271(1)(c) of the I.T. Act dated 28/01/2022, which was upheld by the Ld.CIT(A), NFAC vide order passed u/s 250 of the I.T. Act dated 02/07/2024, is not in accordance with the facts of the case and the provisions of law.

2. The Ld. CIT(A), NFAC, in a summary and casual manner, confirmed the penalty of Rs. 2,07,318/- under section 271(1)(c) of the I.T. Act without proper consideration of the assessee submissions.

3. The Ld. CIT(A), NFAC, ought to have appreciated that the penalty was levied on account of disallowance of bank interest, this due to excess drawls of funds by the partners of the firm, in this scenario, the two attributes of sec 271(1)(c),

i.e., concealment of income or furnishing of inaccurate particulars, could not have been thrust upon the assessee firm, making it liable to pay penalty.

4. *The Ld. CIT(A), NFAC, who confirmed the AO's order, ought to have known that the case of the assessee is that the interest paid to the bank was charged to the Profit & Loss Account but was disallowed by the AO since there were withdrawals of funds by the partners over and above the capital. This by itself cannot be termed as furnishing inaccurate particulars.*

5. *For these and other reasons that are to be urged at the time of hearing, the appellant prays that the penalty imposed is liable to be deleted.”*

7. Ld. Authorised Representative [hereinafter “Ld.AR”] pleaded that the provisions of section 271(1)(c) of the Act could not be attracted as the assessee has not concealed nor furnished any inaccurate particulars of income. Ld.AR vehemently argued that merely because of the disallowance of interest by the Revenue Authorities could not be a ground to invoke the penalty under section 271(1)(c) of the Act. Ld.AR also pleaded that dis-agreement by the revenue for the claim of expenditure cannot be a ground for levying penalty under the Act. Ld.AR argued that all the material facts have been disclosed to the Ld.AO. He also submitted that the Partnership Firm is not paying interest on the credit balance of the capital of the partner and has also not charging interest from the debit balance. On this issue, Ld.AR relied on the decision of the Hon’ble Supreme Court in CIT v. Reliance Petroproducts (P.) Limited [2010] 189 Taxman 322 (SC). He therefore pleaded that penalty be deleted.

8. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] argued that borrowed funds have been used by the Managing Partner whereas interest paid on borrowed funds was claimed as expenditure in the

hands of the firm which could not be accepted. Ld. DR therefore pleaded that Ld. AO has rightly levied the penalty under section 271(1)(c) of the Act consequent to disallowance made during assessment on the interest due to personal utilisation of funds by the Managing Partner. She therefore pleaded that penalty may be upheld.

9. We have heard both the sides and perused the material available on record including the case cited by the Ld.AR. It is an undisputed fact that the Managing Partner has debit balance in the capital Account amounting to Rs.2,01,88,975/-. The contention of the Ld. AO is that, since assessee has obtained overdraft facility from ICICI Bank which stood at Rs.2,80,25,879/- at the end of the year and has claimed interest paid on such loan at Rs. 9,93,185/- in the books of the firm. Ld. AO also observed that no interest has been charged from the Managing Partner on utilisation of the funds from the firm. It is also noticed that the assessee has not disputed the proportionate disallowances of interest except for some minor calculation errors. In our view assessee ought to have disallowed interest proportionately on the debit balance of capital utilised by the Managing Partner. Considering the failure of the assessee to disallow the interest, in our opinion it leads to the conclusion that there is concealment of income by furnishing inaccurate particulars by the assessee. We therefore have no hesitation to confirm the order of the Ld. CIT(A) as there is no infirmity. In the case of CIT v. Reliance Petroproducts (P.) Limited

(supra) relied on by the assessee disallowances on which the penalty was levied is distinguishable on the fact that the disallowances in that case was made under section 14A of the Act. However, in the instant case, the assessee ought to have made a disallowance on the interest claimed by the assessee utilised by the Managing Partner. Accordingly, Grounds raised by the assessee are dismissed.

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

ITA No. 345/VIZ/2024 (A.Y. 2016-17)

11. Coming to appeal relating to ITA No. 345/VIZ/2024 for the A.Y.2016-17, the assessee has raised identical grounds. Therefore, the decision taken in ITA No. 344/VIZ/2024 for the A.Y. 2015-16 in the aforesaid paragraph shall apply mutatis mutandis to the appeal number in ITA No. 345/VIZ/2024. Accordingly, appeal filed by the assessee is dismissed.

12. To sum-up, appeals filed by the assessee are dismissed.

Order pronounced in the open court on 28th January, 2025.

Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) उपाध्यक्ष / VICE PRESIDENT	Sd/- (एस बालाकृष्णन) (S. BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER
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Dated: 28.01.2025
Giridhar, Sr.PS

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

1. निर्धारिती/ The Assessee : **CH Rama Rao**
4-99, Ramavarappadu
Vijayawada – 521108
Andhra Pradesh
2. राजस्व/ The Revenue : **Income Tax Officer - Ward – 3(4)**
C.R. Building
Vijayawada- 520002
Andhra Pradesh
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