

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM “DIVISION” BENCH, VISAKHAPATNAM**

(HYBRID HEARING)

**श्री रवीश सूद ,न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, HON’BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON’BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A. (IT). No.262/VIZ/2025
(निर्धारण वर्ष/ Assessment Year: 2015-16)**

Aravinda Bhupathiraju Rep. By. GPA Holder K.A.R. Bahadur Sri Raja Falt No. 502, SKY Aditya Apartment Gitams Road, Yendada Visakhapatnam – 530045 Andhra Pradesh [PAN:BJOPB0898P] (अपीलधर्ती/Appellant)	Vs.	Asst. CIT (International Taxation) Income Tax office, Infinity Towers, Sankaramatam Road Visakhapatnam- 530016 Andhra Pradesh (प्रत्यर्ती/Respondent)
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Smt A. Aruna, Advocate
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr.Aparna Villuri, Sr. AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	08.07.2025
घोषणा की तारीख/Date of Pronouncement	:	18.07.2025

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals)-10, Hyderabad [hereinafter in short “Ld.CIT(A)”] in Appeal No. CIT(A), HYD-10/10358/2014-15 dated

28.02.2025 arising out of the penalty order passed under section 271(1)(c) of the Income Tax Act, 1961 (in short 'Act') dated 13.03.2023.

2. Brief facts of the case are that, assessee being an individual, a Non-resident Indian, for the A.Y. 2015-16 sold an immovable property situated in Waltair Ward with build-up area of 3980 Sq.feet with undivided share of land of 108 Sq.yards along with two car parking for a sale consideration of Rs.1,15,00,000/- against Stamp Duty Value of Rs.1,43,28,000/-. Assessee has not filed his return of income for the impugned assessment year disclosing the capital gains derived from the sale of immovable property. Therefore, re-assessment proceedings were initiated after taking prior approval of the Competent Authority by issuing notice under section 148 of the Act on 29.03.2021. Assessee did not comply with the notice issued under section 148 of the Act. Further, there was no response from the assessee to subsequent notices issued by the Ld. Assessing Officer [hereinafter in short "Ld. AO"] in the course of assessment proceedings. Ld. AO thereafter adopted the Stamp Duty Value of Rs.1,43,28,000/- while framing the assessment under section 144 of the Act. Ld. AO determined the Long-Term Capital Gain as Rs.85,75,795/-. Assessee, aggrieved by the order of the Ld. AO filed an appeal before Ld.CIT(A). Before Ld. CIT(A), assessee submitted additional evidences which was forwarded for Ld. AO for a Remand Report. Ld. AO vide letter dated 24.12.2024 submitted the Remand Report. Thereafter, the assessee was called

for rebuttal of the Remand Report which was submitted by the assessee on 29.01.2025. Ld. CIT(A) on examining the submissions, Remand Report and rebuttal by the assessee, directed the Ld. AO to recompute the capital gain adopting cost of acquisition and improvement at Rs.79,60,200/-. Ld. AO thereafter passed a consequential order dated 04.04.2025 determining the Long-Term Capital Loss at Rs.20,00,615/-. However, Ld. AO initiated penalty proceedings under section 271(1)(c) of the Act. Ld. AO issued show-cause notice calling for objections for levying of penalty. Since assessee was not responsive, Ld. AO proceeded to levy penalty of Rs.17,66,614/- being 100% tax ought to be evaded.

3. On being aggrieved by the penalty order, assessee filed an appeal before Ld. CIT(A). Ld. CIT(A) upheld the penalty levied under section 271(1)(c), without reconciling the consequence of the relief granted in the quantum appeal while dismissing the appeal filed by the assessee.

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

“1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.

2. The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the penalty of Rs.17,66,614 levied by the assessing officer u/s 271(1)(c) of the Act.

3. The learned Commissioner of Income Tax (Appeals) ought to have considered that in terms of relief granted by the learned Commissioner of

Income Tax (Appeals) in the appeal filed against the assessment order, the amount of capital gains chargeable to tax would be 'Nil' and as such there is no scope for levy of penalty u/s 271(1)(c) of the Act.

4. Any other ground that may be urged at the time of appeal hearing.”

5. The sole issue contested by the assessee is with respect to levy of penalty of Rs.17,66,614/- under section 271(1)(c) of the Act whereas Ld. CIT(A) has allowed the quantum appeal filed by the assessee.

6. On this issue, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that since the relief was granted by the Ld. CIT(A) in the quantum appeal with the direction to Ld. AO to recompute the capital gains after adopting the value determined under section 50C of the Act, assessee does not have any capital gains and accordingly no tax is payable by the assessee. She further argued that if there is no tax leviable on the assessed income, no penalty can be levied under section 271(1)(c) of the Act. Further, she also submitted that there is no concealment of income by the assessee and assessee in bonafide belief that since no tax is payable the return of income need not be filed. She therefore pleaded that the penalty proceedings initiated by the Ld. AO be deleted.

7. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] submitted that assessee is non-compliant, not filed return of income and hence the capital gains accrued to the assessee shall be considered as

concealment of income. She also submitted that the assessee has not filed return of income disclosing the Long-Term Capital Gains / Long-Term Capital Loss from the sale of immovable property. She therefore submitted that the penalty levied by the Ld. AO is justifiable and pleaded for upholding the same.

8. We have heard both the sides and perused the material available on record. It is an admitted and undisputed fact that the assessee has not filed return of income under section 139(1) of the Act but has filed return of income in response to notice under section 148 of the Act. However, it is the contention of the department that assessee has not considered the provisions of section 50C of the Act while filing the return of income under section 148 of the Act. This matter was agitated before Ld. CIT(A) by the assessee wherein the Ld.CIT(A) has directed the Ld. AO to consider the value as per the provisions of section 50C of the Act and also pre-indexed cost of construction including improvement while computing the Long-Term Capital Gain arising out of the sale of immovable property. Ld. AO thereafter passed a consequential order giving effect to the directions of the Ld. CIT(A) and determined the Long-Term Capital Loss at Rs.20,00,615/- vide his consequential order dated 04.04.2025. The Ld.CIT(A), in the quantum proceedings, granted relief to the assessee, rendering the capital gains computation non-taxable. There is merit in the argument of the Ld.AR that since the income computed is negative and no tax is

payable on the same, penalty cannot be levied for concealment of income on the escapement of tax payable by the assessee.

9. As a result, the foundation for the penalty imposed i.e., the addition made under the head “capital gains” no longer exists. In such circumstances, it is a settled proposition that penalty under section 271(1)(c) cannot survive if the quantum addition itself is deleted or substantially modified to extinguish any tax liability.

10. The Hon’ble Supreme Court in the case of K.C. Builders (supra) held that when the additions made in the assessment are deleted in appeal, the penalty under section 271(1)(c) cannot be sustained. Further, the Hon’ble Delhi High Court in CIT v. SAS Pharmaceuticals [335 ITR 259] held that when the primary addition is deleted, the consequential penalty cannot survive. It is also trite law that penalty is not automatic and should be imposed only when there is deliberate concealment or furnishing of inaccurate particulars with intent to evade tax. In the present case, in view of the relief allowed in the quantum proceedings, there is neither tax liability nor any concealment discernible from the record.

11. In light of the above discussion, we find merit in the contentions of the assessee. Since the quantum addition no longer survives, and no independent satisfaction of concealment or furnishing of inaccurate particulars is

demonstrated beyond the said addition, the penalty levied under section 271(1)(c) is not sustainable in law. We therefore have no hesitation to delete the penalty levied under section 271(1)(c) of the Act and thereby allow the grounds raised by the assessee.

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

Order pronounced in the open court on 18th July, 2025.

Sd/-
(रवीश सूद)

(RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 18.07.2025

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

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

1. निर्धारिती/ The Assessee : **Aravinda Bhupathiraju**
Rep. By. GPA Holder
K.A.R. Bahadur Sri Raja
Falt No. 502, SKY Aditya Apartment
Gitams Road, Yendada
Visakhapatnam – 530045
Andhra Pradesh
2. राजस्व/ The Revenue : **Asst. CIT (International Taxation)**
Income Tax office, Infinity Towers,
Sankaramatam Road
Visakhapatnam- 530016
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam