

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल 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 अपील सं./ I.T.A. No.63/Viz/2025

(निर्धारण वर्ष / Assessment Year: 2009-10)

Assistant Commissioner of
Income Tax,
Circle-2(1),
Vijayawada.

(अपीलार्थी/ Appellant)

Vs. Sri Sai Engineering and Drilling,
D. No. 54-18-26, B-3,
Second Lane, LIC Colony,
Vijayawada.

PAN:ABAFS0788A

(प्रत्यर्थी/ Respondent)

C.O. No. 06/Viz/2025

(In आयकर अपील सं./ I.T.A. No.63/Viz/2025)

(निर्धारण वर्ष / Assessment Year: 2009-10)

Sri Sai Engineering and Drilling,
D. No. 54-18-26, B-3, Second
Lane, LIC Colony,
Vijayawada.
PAN:ABAFS0788A

(अपीलार्थी/ Appellant)

Vs. Assistant Commissioner of
Income Tax,
Circle-2(1),
Vijayawada.

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

प्रत्यर्थी की ओर से / Respondent by

: Sri GVN Hari, Advocate

: Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

: 13/08/2025

: 15/09/2025

ORDER

PER S. BALAKRISHNAN, AM:

The captioned appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [“Ld. CIT(A)-NFAC”] in DIN & Order No. ITBA/NFAC/S/250/2024-25/1070556672(1), dated 22/11/2024 arising out of the order passed U/s. 271(1)(c) of the Income Tax Act, 1961 [“the Act”] for the Asst. Year 2009-10. The assessee has also raised Cross Objection before the Tribunal.

2. Brief facts of the case are that the assessee is a partnership firm engaged in the business of contract works and filed its return of income for AY 2009-10 on 21/07/2009 declaring total income of Rs. 2,14,79,100/-. The case was selected for scrutiny and thereafter, as per the information available and the reply of the assessee to various notices, the Ld. AO completed the assessment for AY 2009-10 U/s. 143(3) of the Act on 08/11/2011 determining the total income at Rs. 20,81,82,950/- which includes various additions aggregating to Rs. 18,67,03,853/-. Thereafter, the Ld. AO initiated the penalty proceedings for ‘furnishing of inaccurate particulars of income’ by issuing notice

U/s. 271(1)(c) r.w.s 274 of the Act dated 08/11/2011 and the same was served upon the assessee. Thereafter, the assessee preferred an appeal before the Ld. CIT(A), who vide order dated 30/11/2022 partly allowed the appeal of the assessee by granting relief to the extent of Rs. 17,20,43,863/- and confirmed the additions of Rs.1,46,59,990/- and thereby revised the total income to Rs. 3,61,39,087/-. Thereafter, against the order of the Ld. CIT(A), the Revenue preferred an appeal before the ITAT, Visakhapatnam. The Hon'ble Tribunal in the first round of proceedings vide its order dated 06/01/2017 upheld the decision of the Ld. CIT(A). Thereafter, based on the Miscellaneous Petition filed by the Revenue and the contentions thereon, the Tribunal vide its order dated 06/02/2019 remitted the issues relating to disallowance of transport charges of Rs. 74,97,500/- and disallowance of pit filling charges of Rs. 20,41,800/- to the file of the Ld. CIT(A). Thereafter, the Ld. CIT(A) vide order dated 20/08/2019 upheld the additions made by the Ld. AO on the above two issues and accordingly worked out the revised total income of the assessee at Rs. 4,27,54,387/-. Thus, considering the above facts, the Ld. AO came to the conclusion that the assessee has furnished 'inaccurate particulars of income' to the

extent of Rs.2,12,75,287/- [Rs. 4,27,54,387 – Rs. 2,14,79,100]. Accordingly, the Ld. AO initiated the penalty proceedings and issued a show cause notice dated 21/02/2022 wherein the assessee was asked to show cause as to why penalty U/s. 271(1)(c) of the Act should not be levied for furnishing inaccurate particulars of income. In response, the assessee furnished its reply however, the Ld. AO did not consider the assessee's reply and observed that by virtue of part (B) of Explanation-1 to section 271(1)(c) of the Act, penalty is leviable and thus, the Ld. AO levied penalty of Rs. 72,31,470/- being 100% of the tax sought to be evaded and raised the demand accordingly vide order dated 16/03/2022 passed U/s. 271(1)(c) of the Act. Aggrieved by the penalty order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A).

3. The Ld. CIT(A), after considering the submissions of the assessee, allowed the appeal filed by the assessee and deleted the penalty levied by the Ld. AO. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal and the assessee has raised Cross Objections.

4. At the outset, the Ld. AR pleaded to adjudicate the legal ground raised in the Cross Objection since it goes to the root of the matter regarding the validity of the penalty order.

5. The assessee has raised the following grounds in their Cross Objection:

- “1. The Ld. CIT(A) is justified in holding that the penalty order dated 16/03/2022 is barred by limitation.*
- 2. Without prejudice to the above, the Ld. CIT(A) ought to have held that the notice issued U/s. 271(1)(c) is ambiguous in nature and hence invalid.*
- 3. The Ld. CIT(A) ought to have cancelled the penalty of Rs. 72,31,470/- levied by the AO U/s. 271(1)(c) of the Act as the respondent did not furnish any inaccurate particulars of income.*
- 4. Any other grounds of Cross Objection that may be raised at the time of hearing.”*

6. Firstly, we shall adjudicate Ground No.2 of the Cross Objection raised by the assessee which challenges the issuance of notice U/s. 271(1)(c) of the Act.

7. At the outset, the Ld. Authorized Representative (Ld. AR) submitted that the penalty U/s. 271(1)(c) of the Act cannot be levied since the penalty notice issued by the Ld. AO does not specify the correct applicable limb ie., whether the penalty is levied for ‘concealment of income’ or ‘for furnishing of inaccurate

particulars of income' by striking off the inapplicable limb and non-striking off of the correct limb and therefore, the penalty levied by the Ld. AO is unsustainable in law. In support of his contention, the Ld. AR relied on the decision of the jurisdiction Bench in the case of Konchada Sreeram vs. ITO in ITA No. 388/Viz/2015 (AY 2007-08), dated 06/10/2017. The Ld. AR therefore pleaded that therefore notice cannot be considered as a valid notice and prayed for deletion of the penalty levied by Ld. AO.

8. On the other hand, the Ld. Departmental Representative (Ld. DR) submitted that the Ld. CIT(A) erred in deleting the penalty levied by Ld. AO by holding that the penalty order passed by the Ld. AO is barred by limitation period as provided under the provisions of section 275(1)(a) of the Act and therefore, the penalty order is invalid (page 7 of the CIT(A)'s order). The Ld. DR further submitted that the relevant period is covered by Covid-19 Pandemic and therefore, the limitation period, as observed by the Ld. CIT(A), will not apply to the case of the assessee. Therefore, the Ld. DR pleaded for upholding the penalty levied by the Ld. AO U/s. 271(1)(c) of the Act since the quantum addition has been upheld by the Ld.CIT(A).

9. We have heard both the sides and perused the orders of the Ld. Revenue Authorities as well as the material available on record. It is noticed that the Ld. AO passed the penalty order on 16/03/2022 considering the fact that the Ld. CIT(A) has confirmed the additions to the tune of Rs. 45,75,500/- vide order dated 28/08/2019. The Ld. CIT(A) in accordance with the provisions of section 275(1)(a) of the Act found that the Ld. AO has passed the penalty order beyond the limitation period provided U/s. 275(1)(a) of the Act. However, the Ld. DR submitted that it is covered by the Covid-19 Pandemic and hence the extended period of limitation should be applied. But, we find the Cross Objection the assessee has raised a legal ground contesting that the notice issued U/s. 271(1)(c) of the Act does not specify whether the penalty is levied for “furnishing of inaccurate particulars of income” or “concealment of income”. The Ld. AR placed reliance on the ratio laid down by the jurisdictional Bench in Konchada Sreeram vs. ITO (supra) and the relevant paragraphs from the said order of the Tribunal (supra) are extracted herein below:

“6.1.....In the assessee’s case, the issue is the defective notice u/s 271(1)(c) but not the penalty order. Unless the notice issued u/s 271(1)(c) is valid the penalty order cannot be held to be valid. The assessing officer

did not strike off the irrelevant column in the notice and made known the assessee whether the penalty was initiated for the concealment of income or for furnishing the inaccurate particulars. In the assessment order also the AO simply recorded that the penalty proceedings u/s 271(1)(c) are initiated separately. Neither in the assessment order nor in the penalty notice, the assessing officer has put the assessee on notice for which offence, the penalty u/s 271 was initiated. Therefore, the case is squarely covered by the decision of the Hon'ble Jurisdictional High Court of cited (supra) wherein the Hon'ble high court held as under:

“On principle, when penalty proceedings are sought to be initiated by the revenue under Section 271(1)(c) of the Act of 1961, the specific ground which forms the foundation therefore has to be spelt out in clear terms. Otherwise, on assessee would not have proper opportunity to put forth his defense. When the proceedings are penal in nature resulting in imposition of penalty ranging from 100% to 300% of the tax liability, the charge must be unequivocal and unambiguous. When the charge is either concealment of particulars of income or furnishing of inaccurate particulars thereof, the revenue must specify as to which one of the two is sought to be pressed into service and cannot be permitted to club both by interjecting an 'or' between the two, as in the present case. This ambiguity in the show-cause notice is further compounded presently by the confused finding of the Assessing Officer that he was satisfied that the assessee was guilty of both. We are therefore of the opinion that the order under appeal does not brook interference on any ground. We find no question of law, much less a substantial one, arising for consideration warranting admission of this appeal.”

6.2. On the similar facts, the Coordinate Bench of ITAT, Visakhapatnam in ITA No.229/Viz/2015 in the case of Narayana Reddy Enterprises, following the order of the Coordinate Bench in the case of Smt. Makina Annapurna Vs. ITO, Visakhapatnam in ITA Nos.604 & 605/Vizag/2014 dated 2.2.2017 held that non-striking of the irrelevant column renders the notice issued u/s 271 as invalid. Respectfully, following the decision of the Hon'ble AP High Court cited supra and the decision of this Tribunal cited (supra), we hold that the notice issued u/s 271 is invalid and consequent penalty imposed by the AO is cancelled.”

10. Further, we also observed that the Hon'ble Madras High Court in the case of M/s. Sundaram Finance Limited vs. ACIT in T.C. (Appeal) Nos. 876 and 877 of 2008, dated 23/04/2018 has also held the same view as that of the jurisdiction Tribunal

(supra). Therefore, relying on the judicial pronouncements and respectfully following the decision of the jurisdictional Tribunal as well as the decision of the Hon'ble Madras High Court (supra), we are of the considered view that non-striking of one of the limbs renders the notice issued U/s. 271(1)(c) of the Act as invalid and consequently the penalty proceedings initiated against the invalid notice cannot be sustained and deserves to be quashed. Thus, the ground No.2 raised by the assessee in its Cross Objection is allowed.

11. Since, the ground No.2 raised by the assessee in its Cross Objection is allowed in favour of the assessee, the adjudication of other grounds raised by the assessee does not arise.

**ITA No. 63/Viz/2025
(By Revenue)**

12. The Revenue has raised the following grounds of appeal:

- “1. *The order of the Ld. CIT(A) is erroneous on facts and in circumstances of the case.*
2. *The Ld. CIT(A) erred in deleting the penalty of Rs. 72,31,470/- levied U/s. 271(1)(c) of the Act when the quantum addition of Rs. 2,12,85,290/- was sustained by the First Appellate Authority basing on which the penalty was levied.*
3. *The Ld.CIT(A) ignored the fact that the CBDT extended the time limit for passing the order upto 30/03/2022 vide Notification No. 74/2021, dated 17/09/2021 in S.O. 3814(E), published in the Gazette of India, Extraordinary,*

Part-II, Section-3, Sub-section (ii), due to Covid-19, while directing to delete the addition on the ground that the penalty order was time barred by limitation.

4. *The Ld. CIT(A) erred in allowing the appeal filed by the assessee ignoring the fact that had the case not been selected for scrutiny, the escapement of income by the assessee would not have been unearthed causing revenue loss. On the basis on such addition due to escapement of income by the assessee, the penalty was levied by the Assessing Officer.*
5. *Any other ground that may be urged at the time of appeal hearing.”*

13. Since the Ground No.2 raised by the assessee challenging the validity of the penalty order U/s. 271(1)(c) of the Act, in its Cross Objection, is decided in favour of the assessee by quashing the penalty order, the grounds raised by the Revenue in its appeal ITA No. 63/Viz/2025 do not have legs to stand and hence dismissed.

14. In the result, Cross Objection filed by the assessee is allowed and the appeal of the Revenue is dismissed.

Pronounced in the open Court on 15th September, 2025.

Sd/-

(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

उपाध्यक्ष /VICE PRESIDENT

Dated :15/09/2025

OKK - SPS

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

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

1. निर्धारिती/ The Assessee – Sri Sai Engineering and Drilling, D. No. 54-18-26, B-3, Second Lane, LIC Colony, Vijayawada.
2. राजस्व/The Revenue –Asst. Commissioner of Income Tax, Circle-2(1), Central Revenue Buildings, Ground Floor, Mahathma Gandhi Road, Near Collector Office, Vijayawada, Andhra Pradesh-520002.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam