

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

BEFORE SHRI BALAKRISHNAN S, ACCOUNTANT MEMBER
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.281/VIZ/2025
(Assessment Year 2010-11)

Saradambika Power Plant (P) Ltd.,

Plot No.15, Konna Street,
Radha Krishna Nagar Colony,
Srikakulam.

Andhra Pradesh - 532001
PAN: AAJCS5970R

..... Appellant

v/s

Assistant Commissioner of Income Tax,
Circle – 3(1),
Visakhapatnam

..... Respondent

Assessee by : Shri GVN Hari, Advocate
Revenue by : Dr. Aparna Villuri, Sr.DR

Date of Hearing – 16/09/2025

Date of Order - 27/10/2025

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 11.02.2025, passed under section 250 of the Income-tax Act, 1961 (*"the Act"*), by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], which in turn arose from the penalty order dated 23.02.2022 passed under section 271(1)(c) of the Act, for the assessment year 2010-11.

2. In this appeal, the assessee has raised the following grounds: -

"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) ought to have quashed the notices issued on 31.01.2013 & 31.08.2015 u/s, 271(1)(c) of the Act as invalid on the ground that the specific limb for which the penalty was proposed to be levied was not ticked in the said notices.

3. Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) is not justified in upholding the penalty of Rs.90,60,642 levied by the assessing officer u/s 271(1)(c) of the Act in respect of addition of Rs.2,61,53,037 made towards disallowance of interest expenditure u/s 43B of the Act."

3. The brief facts of the case are that for the year under consideration, the assessee filed its return of income admitting a loss of Rs. 1,44,30,427/-. The return filed by the assessee was selected for scrutiny, and vide order dated 31.01.2013 passed under section 143(3) of the Act, the Assessing Officer ("AO") made the additions on account of disallowance of delay remittance of employee's contribution to provident fund and towards disallowance under section 40A(3) of the Act. Thus, the AO assessed the total loss of Rs.1,39,26,678/-. Subsequently, the assessment was reopened on the basis that the deduction claimed by the assessee towards interest payable to IREDA to the tune of Rs.2,61,53,037/- cannot be allowed under section 43B of the Act. After considering the submissions of the assessee, the AO vide order dated 31.08.2015 passed under section 143(3) read with section 147 of the Act made an addition of Rs.2,61,53,037/- towards disallowance of interest under section 43B of the Act.

4. Subsequently, the penalty order dated 25.02.2022 was passed by the AO under section 271(1)(c) of the Act, wherein penalty of Rs.90,60,642/- was levied. In its appeal before the learned CIT(A) against the penalty order, the assessee specifically raised the ground that the notice issued under section

274 read with section 271(1)(c) of the Act is ambiguous in nature as the relevant limb for which the penalty was proposed to be levied was not specified, and thus, such notice is invalid. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the levy of penalty under section 271(1)(c) of the Act. Being aggrieved, the assessee is in appeal before us.

5. During the hearing, the learned Authorised Representative ("*learned AR*"), *inter alia*, submitted that the penalty in the present case has been levied without specifying the head under which the same has been levied. In this regard, the learned AR, by referring to the penalty notice dated 31.08.2015 issued under section 274 read with section 271(1)(c) of the Act, submitted that the AO has not specified whether the penalty has been levied for concealment of income or furnishing inaccurate particulars of income.

6. On the other hand, the learned Departmental Representative vehemently relied upon the order passed by the lower authorities.

7. We have considered the submissions of both sides and perused the material available on record.

8. In the present case, the AO initiated the penalty proceedings under section 271(1)(c) of the Act and levied the penalty of Rs.90,60,642/-. From the perusal of the notice dated 31.08.2015 issued under section 274 read with section 271(1)(c) of the Act, forming part of the paper book at page 1, we find that the AO did not strike off any of the twin charges, i.e., concealment of particulars of income or furnishing of inaccurate particulars of income. The

case of the assessee is squarely covered by the decision of the Hon'ble Jurisdictional High Court in PCIT vs. Smt. Baisetty Revathi, reported in (2017) 938 ITR 88 (Andhra Pradesh and Telangana), wherein the Hon'ble High Court observed as follows: -

"17. 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 therefor has to be spelt out in clear terms. Otherwise, an assessee would not have proper opportunity to put forth his defence. When the proceedings are penal in nature, resulting in imposition of penalty ranging from 100 per cent. to 300 per cent. 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 one 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."

9. Accordingly, respectfully following the aforesaid decision of the Hon'ble Jurisdictional High Court, the penalty order passed under section 271(1)(c) of the Act is quashed.

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

Order pronounced in the Open Court on 27/10/2025

Sd/-
BALAKRISHNAN S
ACCOUNTANT MEMBER

Sd/
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

VISAKHAPATNAM, DATED: 27/10/2025
Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Visakhapatnam; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, VISAKHAPATNAM