

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM**

**श्री संदीप सिंह करहैल, न्यायिक सदस्य एवं श्री ओंकारेश्वर चिदारा लेखा सदस्य के समक्ष,  
BEFORE SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER  
&  
SHRI OMKARESHWAR CHIDARA, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A. No. 657/VIZ/2025  
(निर्धारण वर्ष/ Assessment Year:2012-13)**

|   |    |   |
|---|----|---|
| <b>Visakhapatnam Industrial Water Supply Company Limited</b><br>GVMC Room No.204<br>Tenneti Bhavan, Asilmetta Junction<br>Visakhapatnam – 530002<br>Andhra Pradesh<br><br>[PAN: AABCV2240H]<br>(अपीलार्थी/ Appellant) | v. | <b>Dy. CIT – Circle – 5(1)</b><br>Visakhapatnam<br><br>(प्रत्यर्थी/ Respondent) |
|---|----|---|

|   |   |                                 |
|---|---|---------------------------------|
| करदाता का प्रतिनिधित्व / Assessee Represented by          | : | Shri C. Subrahmanyam, CA        |
| राजस्व का प्रतिनिधित्व / Department Represented by        | : | Shri Badicala Yadagiri, CIT(DR) |
| सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing | : | 18.12.2025                      |
| घोषणा की तारीख/Date of Pronouncement                      | : | 19.12.2025                      |

**आदेश /O R D E R**

**PER SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER:**

1. The assessee has filed the present appeal against the impugned order dated 13.08.2025, passed under section 250 of Income Tax Act, 1961 (in short 'Act') by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short "Ld.CIT(A)"], which in turn arose

from the penalty order dated 26.12.2023 passed under section 271(1)(c) of the Act for the A.Y. 2012-13.

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

*“1. That, under the facts and circumstances of the case, the penalty order passed u/s. 271(1)(c) of the Income Tax Act, Dt. 26.12.2023, and upheld by the Ld. CIT (Appeals) vide order passed u/s. 250 Dt. 13.08.2025, is contrary to the facts of the case and the provisions of law.*

*2. The penalty order passed u/s. 271(1)(c) of the Income Tax Act, and upheld by the Learned CIT(A) is bad in law and void ab initio, as the notice issued under the said section is vague and fails to specify whether the penalty is initiated for concealment of income or furnishing of inaccurate particulars of income.*

*3. The Learned CIT(A) erred in rejecting the appellant's specific legal ground challenging the validity of the defective notice u/s. 271(1)(c) without proper adjudication and in disregard of binding precedents of the Hon'ble Supreme Court and various High Courts.*

*4. The Learned CIT(A) erred in ignoring that under identical circumstances interest paid to APIIC had been accepted by the same Assessing Officer in earlier assessments completed u/s 143(3)/147 for AYs 2005-06 to 2007-08, and even after revision u/s 263. Having accepted the claim on identical facts, the Assessing Officer cannot now turn around and allege concealment of income of the interest paid to APIIC for the purpose of penalty in the impugned year.*

*5. The Learned CIT(A) failed to appreciate that where two views are possible and the appellant has taken a bona fide view, which view was also accepted by assessing officer himself in the previous years, under these circumstances, the same assessing officer cannot come out now and say there is concealment of income for levy of penalty u/s. 271(1)(C).*

*6. The Learned CIT (A) failed to appreciate that the appellant had made full and true disclosure of all particulars in the return of income, and the disallowance of interest payment to APIIC is merely a difference of opinion on interpretation of law, not a case of concealment or furnishing of inaccurate particulars.*

*7. Without prejudice to the foregoing, the Learned CIT(A) erred in sustaining the penalty u/s 271(1)(c) in respect of interest paid to APIIC, though the claim was fully disclosed in the audited financial statements and*

*return of income, under these circumstances a bona fide and transparent claim cannot constitute "concealment" or "furnishing of inaccurate particulars"; hence, the penalty is unsustainable in law.*

8. *For these and other reasons that are to be urged at the time of hearing the appellant prays that the order levying penalty u/s. 271(1)(c) as confirmed by the Learned CIT(A) is liable to be quashed in the interest of justice and fair play."*

3. The brief facts of the case are that, for the year under consideration, the assessee filed its return of income on 29.09.2012, declaring total income of Rs.1,57,90,420/-. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) and 142(1) of the Act were issued and served on the assessee. During the course of assessment proceedings, upon perusal of the details filed by the assessee, the assessee was asked to show cause as to why the interest amounting to Rs.44,88,14,000/- payable to APIICL should not be disallowed under section 43B of the Act. In response, the assessee submitted that from a careful reading of section 43B r.w.s. 4A of the Companies Act, 1956, which defines the term "Public Financial Institution", APIICL is not a public financial institution, and hence it is outside the purview of section 43B of the Act. Further, the assessee submitted that a close reading of Explanation 4(c) to section 43B r.w.s. 36(1)(viii) of the Act makes it clear that APIICL does not fall under the category of State Industrial Investment Corporation. The Assessing Officer ["in short "Ld.AO"] vide order dated 30.03.2015 passed under section 143(3) of the Act disagreed with the submissions of the assessee and following the decision of the Ld. CIT in assessee's own case for the A.Y. 2005-06,

A.Y.2006-07 and A.Y. 2007-08 under section 263 of the Act held that APIICL is a Public Financial Institution / State Industrial Investment Corporation, and therefore the provisions of section 43B of the Act are applicable. Accordingly, the unpaid interest amounting to Rs.19,54,88,630/- was disallowed under section 43B of the Act and added to the total income of the assessee. In further appeal, the Ld. CIT(A) upheld the disallowance made under section 43B of the Act, which was also upheld by the Tribunal in assessee's own case for the year under consideration in quantum proceedings.

4. In the meanwhile, penalty proceedings under section 271(1)(c) of the Act were initiated in the case of the assessee for the year under consideration and vide order dated 26.12.2023 passed under section 271(1)(c) of the Act, a penalty amounting to Rs.6,34,26,285/- was levied. In its appeal before Ld. CIT(A) against the penalty order, the assessee specifically raised the ground that the notice issued under section 274 r.w.s. 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. Ld. 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, by observing as follows: -

*“9.4 During the appellate proceedings, the appellant objected that penalty levied on the basis of ambiguous notice is invalid. The appellant contested that the penalty notice issued dated 30.03.2015 was ambiguous in as much as the AO did not clearly mention on which ground the penalty is*

*being proposed ie whether penalty is being levied for furnishing inaccurate particulars of income or for concealment of income or for both. The appellant relied upon the Supreme Court Judgment in the case of SSA'S Emerald Meadows [2016] 73 taxmann.com 248 wherein the Hon'ble Supreme Court dismissed the SLP filed by the revenue against the decision of Hon'ble High Court of Karnataka by holding that the notice issued by the AO u/s 274 rws 271(1)(c) was bad in law as it did not specify under which limb of section 271(1)(c) penalty proceedings had been initiated. The contention of the appellant has been considered and it is seen from the penalty order passed u/s 271(1)© dated 26.12.2023 that the appeal filed by the appellant against the addition made by the AO in the assessment order has been dismissed by the CIT(A). The CIT(A) held that the AO was justified in disallowing the interest payment of Rs.19,54,88,630,- towards unpaid interest to APIC for the concerned assessment year as APIICL. The relevant para of the appellate order is reproduced hereunder:*

*“AO was justified in disallowing the interest payment of Rs.19,54,88,630/- towards unpaid interest to APIC for the concerned assessment year as APIICL, being a government company, has engaged in providing long term finance to the appellant, and therefore, it squarely falls under explanation 4(c) to section 43B and Section 43B(d) Accordingly, the appeal is dismissed on all the grounds.”*

9.5 *The AO has mentioned in the penalty order that, Both (The Assessing Officer and CIT (Appeal) has considered in their respective orders that the assessee has furnished inaccurate particulars of Income. Assessee could not produce any logical reply on the issues therefore reply submitted by the assessee is rejected. Further, during the course of Penalty proceedings, necessary notices/letters were issued and delivered on appellant on the given e-mail ID time to time. The Assessing officer has in his order passed u/s 143(3) of the IT act disallowed the unpaid interest of Rs. 19,54,88,630/- to APIIC Ltd and added back in the appellant's income considering it as concealment of particulars of Income. Thereafter it is seen that order u/s 250 was. passed in this case by the National Faceless Appeal Center (NFAC) vide appellate order TBA/NFACIS/250/2023-24/1053960802(1) Dated 26/06/2023 wherein Learned CIT (A) confirms the AO's assessment order and dismissed all the grounds of appeal of the appellant.*

9.6 *Further reliance is placed on the Judgment of Hon'ble ITAT in the case of Jyothirmooy Yamsani [TS-568-ITAT-2017(HYD)]. The Judgment was passed by the ITAT in 2017 after the decision of Hon'ble Supreme Court cited by the appellant as discussed above in para 9.4. The Hon'ble ITAT rejected the assessee's stand that since the AO did not strike off the inapplicable portion in the notice issued u/s 274, notice was invalid. ITAT Stated that, since assessee was categorically communicated the nature of default, it cannot be said that he was not given proper opportunity of responding to the notice by virtue of not striking off the word "or" in the*

*penalty notice. ITAT noted that, since assessee responded to both the accusations, there was no confusion in the mind of the assessee regarding reasons as to why penalty proceedings were initiated. ITAT relied on SC ruling in Alnoori Tobacco Products and Anr. wherein it was observed that, "precedent should be followed only so far as it marks the path of justice and a close similarity between one case and another is not enough to match the colour of one case against the colour of another."*

*ITAT stated that, in the given case, AO had made it transparent that the initiation of proceedings were not only for concealment of penalty' but also for 'furnishing of inaccurate particulars of income'. Thus, ITAT denied assessee's contention that, there was no proper opportunity on account of lack of clarity in issuance of notice violating principles of natural justice. TAT stated that, one of the portions was not struck off in the notice so as to achieve the purpose for which notice was issued. ITAT observed that, assessee had understood it in the same perspective and never raised objection with regard to issuance of notice.*

*ITAT held that it was a clear case of 'concealment of income' and non-recording of the deposits in the balance sheet would amount to furnishing of inaccurate particulars of income, thereby ruled in favour of Revenue.*

*9.7. Considering these facts and information and the Judgment of Hon'ble ITAT, I am of the opinion that, the AO while passing the penalty order has mentioned that the appellant has furnished inaccurate particulars of Income as well as concealed of particulars of Income. The learned AO has not struck any of the limbs under which penalty has been invoked, implies that penalty u/s 271(1)(c) has been initiated against the appellant for furnishing inaccurate particulars and for the concealment of particulars of income. Merely by not specifying the limbs under which section 271(1)(c) has been invoked by striking out any one of the phrase cannot be considered as the notice to be invalid. From the Assessment order, it is clearly established that the appellant has evaded tax wilfully and Hon'ble ITAT has also upheld the said addition. Hence, considering the above facts, I am of the view that the contention raised by the appellant with respect to the validity of the penalty notice is not acceptable and hence Dismissed."*

5. Being aggrieved, the assessee is in appeal before us.
  
6. During the hearing, the Ld. Authorised Representative [hereinafter "Ld.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,

Ld.AR, by referring to the penalty notice dated 30.01.2015 issued under section 274 r.w.s. 271(1)(c) of the Act, submitted that the Ld. AO has not specified whether the penalty has been levied for “concealment of income” or “furnishing inaccurate particulars of income”.

7. On the other hand, Ld. Departmental Representative [hereinafter in short “Ld. DR”] by vehemently relying upon the order passed by the Ld. CIT(A), on this issue, submitted that the Ld. CIT(A) confirmed the penalty on both aspects i.e., concealment of income and furnishing of inaccurate particulars of income.

8. We have considered the submissions of both sides and perused the material available on record. In the present case, the Ld. AO initiated the penalty proceedings under section 271(1)(c) of the Act and levied the penalty of Rs.6,34,26,385/-. From the perusal of the notice dated 30.01.2015 issued under section 274 r.w.s. 271(1)(c) of the Act, forming part of the Paper Book at Page No.7, we find that the Ld. AO did not strike off any of the twin charges, i.e., concealment of particulars of income or furnishing of inaccurate particulars of income. We find the case of the assessee is squarely covered by the decision of the Hon’ble Jurisdictional High Court of Andhra Pradesh in the case of PCIT v. Smt. Baisetty Regvathi, reported in (2017) 398 ITR 88 (Andhra Pradesh and Telangana) and 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 percent. 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. From the perusal of the record, we find that in its submissions before the Ld. CIT(A), the assessee specifically placed reliance on this decision of the Hon'ble Jurisdictional High Court of Andhra Pradesh in the case of PCIT v. Smt. Baisetty Regvathi (supra) apart from other decisions of the Hon'ble Courts on a similar issue. However, as is evident from the perusal of the impugned order, the Ld. CIT(A) rejected the contentions of the assessee and placed reliance upon the decision of the Tribunal in the case of Jyothirmooy Yamsani [TS-568-ITAT-2017(HYD)] wherein similar issue was decided against the taxpayer, and did not at all consider the decision of the Hon'ble Jurisdictional High Court of Andhra Pradesh, wherein, as noted above, it has been specifically held that the Revenue must specify as to which one of the two limbs is sought to be pressed into service and both the limbs cannot be permitted to be clubbed for levying the penalty under section 271(1)(c) of the Act. Accordingly, respectfully following the decision of



the Hon'ble Jurisdictional High Court of Andhra Pradesh cited supra, the penalty levied 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 19<sup>th</sup> December, 2025.

Sd/-  
(ओंकारेश्वर चिदारा)  
(OMKARESHWAR CHIDARA)  
लेखा सदस्य /ACCOUNTANT MEMBER  
Dated:19.12.2025  
Giridhar, Sr.PS

Sd/-  
(संदीप सिंह करहैल)  
(SANDEEP SINGH KARHAIL)  
न्यायिक सदस्य/JUDICIAL MEMBER

आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Visakhapatnam Industrial Water Supply Company Limited**  
GVMC Room No.204  
Tenneti Bhavan, Asilmetta Junction  
Visakhapatnam – 530002  
Andhra Pradesh
2. राजस्व / The Revenue : **Dy. CIT – Circle – 5(1)**  
Visakhapatnam
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