आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

श्री रविश सूद,न्यायिक सदस्य एवं श्री मधुसूदन सावड़िया लेखा सदस्य समक्ष|

Before Shri Ravish Sood, Judicial Member
A N D
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं /**ITA No.1468/Hyd/2025**
(निर्धारण वर्ष/Assessment Year: 2012-13)

M/s Vijayawada Tollway Private Limited Hyderabad PAN:AACCV7296A	Vs.	Dy. CIT Circle 8(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri A.V. Raghuram, Advocate	
राजस्व द्वारा/Revenue by::	Shri S. Arun Kumar, Sr. DR	
सुनवाई की तारीख/Date of hearing:	17/12/2025	
घोषणा की तारीख/Pronouncement:	06/02/2026	

आदेश/ORDER

Per Madhusudan Sawdia, A.M.:

This appeal is filed by M/s. Vijayawada Tollway Private Limited ("the assessee"), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)") dated 21.07.2025 for the A.Y. 2012-13.

2. The assessee has raised the following grounds of appeal:

> *"1. That the orders passed by the Assessing Officer and CIT(A) is bad in law, contrary to facts of the case and liable to be quashed.*

2. That on the facts and in the circumstances of the case, the learned Assessing Officer as well as the learned Commissioner of Income Tax (Appeals) have erred in law and in facts in levying penalty of Rs.3,74,31,109/- under section 271(1)(c) of the Income Tax Act, 1961.

3. That the learned Assessing Officer as well as the learned Commissioner of Income Tax (Appeals) have failed to appreciate that the issue involved was debatable and arose from a difference of opinion on method of revenue recognition under the Concession Agreement vis-à-vis provisions of the Income Tax Act and ICDS IV, and therefore penalty under section 271(1)(c) is not leviable.

4. That the learned Assessing Officer as well as the learned Commissioner of Income Tax (Appeals) have erred in holding that the appellant had furnished inaccurate particulars of income, ignoring the fact that all material facts were fully disclosed in the return of income and financial statements filed along with the return.

5. That the disallowance/addition made by the Assessing Officer is a result of change in accounting treatment and difference in interpretation of revenue recognition principles, which does not amount to furnishing of inaccurate particulars of income.

6. That the appellant had a bona fide belief in adopting revenue recognition as per the terms of the Concession Agreement, which was consistently followed and accepted in earlier years, and hence no malafide intent can be attributed.

7. That the Assessing Officer failed to discharge the burden of proving deliberate concealment or furnishing of inaccurate particulars, which is a prerequisite for invoking penalty u/s 271(1)(c).

8. That the penalty proceedings were vitiated by non-application of mind and mechanical satisfaction by the Assessing Officer, without bringing any material evidence on record to show that there was any intention to evade tax.

9. The appellant craves leave to add/ alter/ modify grounds which would be necessary for adjudication of the case."

3. Brief facts of the case are that the assessee is a company engaged in the business of developing, operating, and maintaining infrastructure facilities. The assessee filed its return

of income for the assessment year 2012–13 on 28.09.2012, declaring a total income of Rs.1,24,88,300/-. The assessment of the assessee was completed under section 143(3) of the Income Tax Act, 1961 ("the Act") on 18.03.2015, accepting the returned income. Subsequently, the case of the assessee was reopened under section 147 of the Act and reassessment was completed under section 143(3) read with section 147 of the Act on 05.12.2019, wherein expenditure of Rs.11,53,67,882/- was disallowed by the Learned Assessing Officer ("Ld. AO") and the total income of the assessee was assessed at Rs.12,78,56,182/-. On the aforesaid disallowance of expenditure, the Ld. AO initiated penalty proceedings under section 271(1)(c) of the Act and levied penalty of Rs.3,74,31,109/- vide order dated 27.03.2022.

4. Aggrieved with the penalty order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A), who confirmed the penalty levied by the Ld. AO and dismissed the appeal.

5. Aggrieved with the order of the Ld. CIT (A), the assessee is in further appeal before the Tribunal. At the outset, the Learned Authorized Representative ("Ld. AR") submitted that the solitary issue involved out of the grounds of the appeal of the assessee is on account of levy of penalty of Rs.3,74,31,109/- levied under section 271(1)(c) of the Act. In this regard, the Ld. AR invited our attention to page no. 8 of the reassessment order dated 05.12.2019 passed under section 143(3) read with section 147 of the Act and submitted that the Ld. AO has merely stated that "penalty proceedings under section 271(1)(c) of the Act are initiated separately." It was contended that the Ld. AO has not recorded any satisfaction as to whether the alleged default was on account of concealment of particulars of income or furnishing of

inaccurate particulars of income. The Ld. AR submitted that the recording of such specific satisfaction in the body of the assessment order is a mandatory jurisdictional requirement and in the absence thereof, the entire penalty proceedings are vitiated and liable to be quashed. In support of this proposition, reliance was placed on the decision of the Hon'ble Andhra Pradesh High Court in the case of V. R. Projects & Investments (P.) Ltd. Vs. DCIT (300 ITR 40), wherein, referring to the decision of the Hon'ble Delhi High Court in CIT Vs. Ram Commercial Enterprises Ltd. (246 ITR 568), it was held that in the absence of recording of satisfaction in the assessment order, penalty proceedings under section 271(1)(c) of the Act are unsustainable in law. Accordingly, the Ld. AR prayed before the Bench to quash the penalty order of the Ld. AO.

6. Per contra, the Learned Departmental Representative ("Ld. DR") relied upon the orders of the lower authorities and submitted that penalty was rightly levied as the disallowance of expenditure resulted in enhancement of income and therefore, the Ld. AO was justified in initiating and levying penalty under section 271(1)(c) of the Act.

7. We have carefully considered the rival submissions and perused the material available on record. We have also gone through page no. 8 of the reassessment order dated 05.12.2019 passed by the Ld. AO under section 143(3) read with section 147 of the Act, the relevant portion of which is to the following effect:

M/s.Vijayawada Tollway Private Limited
Order u/s. 143(3) r.w.s 147/ AY 2012-13

Less Prepaid taxes: TDS : 1,08,30,957 Advance Tax: 5,00,00,000	6,08,30,957
Refundable	(1,93,48,018)
Less refund already issued vide 143(1) dt 28.03.2014	6,50,55,990
Total Demand	4,57,07,972
Add: Interest u/s 234D	1,57,69,250
Net Demand raised vide 143(3) r.w.s 147 dated 05.12.2019	6,14,77,222

Penalty proceedings u/s 271(1)(c) initiated separately.

SEAL

(VENUDHAR GODESI, I.R.S)
Deputy Commissioner of Income-tax,
Circle-17(2), Hyderabad.

8. On perusal of the above, we find that the Ld. AO has merely mentioned that "penalty proceedings u/s 271(1)(c) of the Act initiated separately." However, there is no recording of satisfaction whatsoever by the Ld. AO as to the specific charge, namely, whether the penalty proceedings were initiated for concealment of particulars of income or for furnishing of inaccurate particulars of income. It is well settled that recording of clear and unambiguous satisfaction in the body of the assessment order is a condition precedent for valid initiation of penalty proceedings under section 271(1)(c) of the Act. A vague expression, without specifying the exact limb under which penalty is sought to be imposed, does not satisfy the statutory requirement. In this regard, we have gone through para nos. 7 to 13 of the order of the Hon'ble Delhi High Court in the case of CIT Vs. Ram Commercial Enterprises Ltd., 246 ITR 568 which is to the following effect:

> *"7. The learned senior counsel for the assessee has submitted that the satisfaction as to the assessee having concealed the particulars of his income or furnished inaccurate particulars of*

such income is to be arrived at by the Assessing Officer during the course of any proceedings under the Act, which would mean the assessment proceedings, without which, the very jurisdiction to initiate the penalty proceedings is not conferred on the assessing authority by reference to clause (c) of sub-section (1) of section 271 of the Act. Reliance has been placed on the Supreme Court decision in D.M. Manasvi v. CIT [1972] 86 ITR 557, wherein their Lordships have reiterated the view of the law taken in CIT v. S.V. Angidi Chettiar [1962] 44 ITR 739, 745, stated in the following terms :

" The power to impose penalty under section 28 depends upon the satisfaction of the Income-tax Officer in the course of proceedings under the Act; it cannot be exercised if he is not satisfied about the existence of conditions specified in clause (a), (b) or (c) before the proceedings are concluded. The proceeding to levy penalty has, however, not to be commenced by the Income-tax Officer before the completion of the assessment proceedings by the Income-tax Officer. Satisfaction before conclusion of the proceeding under the Act, and not the issue of a notice or initiation of any step for imposing penalty, is a condition for the exercise of the jurisdiction. " (p. 562).

8. The learned counsel further pointed out by reading the appellate order of the Tribunal that the findings of fact arrived at by any of the authorities below were not a subject-matter of challenge before the Tribunal; what was contended before and what actually prevailed with the Tribunal is the absence of any finding recorded by the assessing authority in the order of assessment conferring jurisdiction for initiation of penalty proceedings. The Supreme Court judgment in D.M. Manasvi's case (supra) was relied on by the Tribunal while setting aside the penalty.

9. The learned counsel also carried the court through the order of assessment dated 17-2-1988 to demonstrate that the requisite satisfaction is not to be found arrived at in the order of the assessment.

10. The learned senior standing counsel for the revenue, on the other hand, submitted that all the facts available on record and as pointed out by him coupled with the fact that by the assessment order itself the assessing authority has chosen to initiate proceedings under section 271(1)(c) leads to an inference that the requisite satisfaction was arrived at by the assessing authority. Therefore, the initiation of penalty proceedings cannot be found fault with and, hence, a question of law does arise.

11. Having heard the learned counsels for the parties and having given our anxious consideration to the material available on the record, in the light of the law laid down by their Lordships of the Supreme Court, we are of the opinion that no fault can be found with the judgment of the Tribunal and, therefore, the question suggested by the revenue does not arise as a question of law from the order of the Tribunal. The law is clear and explicit. Merely because this Court while hearing this application may be inclined to form an opinion that the material available on record could have enabled the initiation of penalty proceedings that cannot be a substitute for the requisite finding which should have been recorded by the assessing authority in the order of assessment but has not been so recorded.

12. A bare reading of the provisions of section 271 and the law laid down by the Supreme Court makes it clear that it is the assessing authority which has to form its own opinion and record its satisfaction before initiating the penalty proceedings. Merely because the penalty proceedings have been initiated, it cannot be assumed that such a satisfaction was arrived at in the absence of the same being spelt out by the order of the assessing authority. Even at the risk of repetition we would like to state that the assessment order does not record the satisfaction as warranted by section 271 for initiating the penalty proceedings.

13. As we have already held that the question suggested by the revenue does not arise as a question of law from the order of the Tribunal, no fault can be found with the Tribunal rejecting the department's application under section 256(1)."

9. On perusal of the above, we find that the Hon'ble Delhi High Court has held that the assessing authority should form its own opinion and record its satisfaction before initiating the penalty proceedings. Merely because the penalty proceedings have been initiated, it cannot be assumed that such a satisfaction was arrived at in the absence of the same being spelt out by the order of the assessing authority. We have also gone through the para nos. 20 to 24 of the order of the Hon'ble Andhra Pradesh High Court in the case of V. R. Projects & Investments (P.) Ltd. Vs. DCIT (Supra), which is to the following effect:

> *"20. From the legal position noticed above, it is clear that the Assessing Officer has to form his own opinion and record his satisfaction of concealment of income or furnishing inaccurate particulars of income before initiating penalty proceedings under section 271(1)(c) of the Act. It is also clear that such satisfaction of the Assessing Officer must be spelt out in the order of assessment itself but cannot be assumed from the issue of a notice under section 271(1)(c) of the Act. Failure to record such satisfaction amounts to a jurisdictional defect which cannot be cured.*
>
> *21. However, while placing strong reliance upon the expression 'in the course of any proceedings under the Act' in section 271(1) of the Act, the learned Counsel for the respondent sought to contend that the penalty proceedings being independent it is sufficient if the satisfaction is recorded in the order levying penalty. The learned Counsel in support of his submission cited a Full Bench decision of Allahabad High Court in CIT v. Gopal Krishna Singhania [1973] 89 ITR 27.*
>
> *22. In the above decision, the Full Bench of Allahabad High Court was dealing with proceedings under section 34 of the Income-tax Act, 1922 which corresponds to sections 147 and 148 of the new Act of 1961 which provides for reassessment of income chargeable to tax which has escaped assessment. Having considered the scope and object of the said provisions, the Full Bench held that penalty under section 28(1)(c) of the old Act [corresponding to section 271(1)(c) of the new Act] can be levied during the course of proceedings under section 34 in respect of a default committed during the original assessment proceedings.*
>
> *23. The said decision is clearly distinguishable on facts and the ratio laid down therein is not applicable to the instant case.*
>
> *24. It is also relevant to note that whether the assessee has concealed his income or has deliberately furnished inaccurate particulars thereof is essentially a finding of fact which has to be spelt out by way of recording the satisfaction of the Assessing Officer as required under section 271(1) of the Act. Therefore, in the absence of such a finding in the assessment order no penalty proceedings can be initiated."*

10. On perusal of the above, we find that the Hon'ble jurisdictional High Court has held that whether the assessee has concealed the income or had deliberately furnished inaccurate particulars thereof is essentially a findings of fact which has to be spelt out by way of recording the satisfaction of the Ld. AO under section 271(1)(c) of the Act. In the present case, the Ld. AO has

not recorded any satisfaction as to whether the alleged default on the part of the assessee was on account of concealment of particulars of income or furnishing of inaccurate particulars of income. Therefore, in our considered view, the absence of such mandatory satisfaction goes to the very root of the matter and renders the initiation of penalty proceedings invalid. Respectfully following the ratio laid down by the Hon'ble Andhra Pradesh High Court in V. R. Projects & Investments (P.) Ltd. v. DCIT (supra), as well as the decision of the Hon'ble Delhi High Court in CIT v. Ram Commercial Enterprises Ltd. (supra), we hold that the penalty proceedings initiated under section 271(1)(c) of the Act are unsustainable in law. Accordingly, the penalty levied by the Ld. AO and confirmed by the Ld. CIT(A) is hereby deleted.

11. Since we have decided the appeal in favour of the assessee on the legal ground relating to the invalid initiation of penalty proceedings under section 271(1)(c) of the Income Tax Act, 1961, the other grounds raised by the assessee on merits of the levy of penalty do not survive for adjudication at this stage. Accordingly, the same are not adjudicated upon and are kept open.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 6th February, 2026.

Sd/-	Sd/-
(RAVISH SOOD) **JUDICIAL MEMBER**	**(MADHUSUDAN SAWDIA)** **ACCOUNTANT MEMBER**

Hyderabad dated 6th February 2026.

Vinodan/sps

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3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order

GEETHA VISHWANATHAN

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