

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'A' Bench, Hyderabad**  
*(Through Video Conferencing)*  
**Before Smt. P. Madhavi Devi, Judicial Member**  
**AND**  
**Shri Laxmi Prasad Sahu, Accountant Member**

ITA No.931/Hyd/2019		
Assessment Year: 2015-16		
Raasi Refractories Ltd Hyderabad PAN:AABCR0333H (Appellant)	Vs.	Dy. Commissioner of Income Tax, Circle 3(1) Hyderabad (Respondent)
Assessee by:	Sri A.V. Raghu Ram	
Revenue by:	Smt. N. Esther, DR	
Date of hearing:	03/08/2021	
Date of pronouncement:	30/08/2021	

**ORDER**

**Per Smt. P. Madhavi Devi, J.M.**

This is assessee's appeal for the A.Y 2015-16 against the order of the CIT (A)-3, Hyderabad, dated 7.2.2019 confirming the penalty order passed by the Assessing Officer u/s 271(1)(c) of the Act.

2. At the outset, it is seen that there is a delay of 16 days in filing of the appeal before the Tribunal and the assessee has filed an application explaining the reasons for the delay and sought condonation of delay. The contents of the affidavit filed in support of the said application are as under:

*"1. I, S.Subrahmanya Sastry, s/o late S.A Sarma, aged 56 years r/o H.No.1-6-18/4, Road No.35, Chaitanyapuri, Hyderabad, occupation Manager, accounts in M/s. Raasi refractories Ltd., Hyderabad do solemnly affirm and state as follows.*

2. Appellate Order dated 07-02-2019 passed by C.I.T (Appeals)-3, Hyderabad u/s.250 of the LT Act, '61, in ITANo:10131/DCIT,-Cir.3(1)/Hyd/CIT(A)-3,Hyderabad 2018-19 in the case of M/s.Raasi refractories Ltd., was received on 16-3-2019. I informed my employer who instructed me to contact the tax consultant and get the appeal papers ready for filing appeal before the Hon'ble Income Tax Appellate Tribunal, Hyderabad. The administrative office of M/s.Raasi Refractories at Hyderabad is being managed with skeleton staff and due to rush of work I could not get the work of preparation of appeals papers done immediately. Due to year end work and attendant matters and finalisation of accounts for submission to BSE, I had to go around the city on my motorcycle in the summer months of March and April consequent to which I was affected by severe sun stroke and malfunctioning of kidneys due to dehydration. I was unable to move or undertake work during the month of May starting from 5th May 2019. I could attend to work from the 29<sup>th</sup> of May, 2019. Immediately the tax consultant was contacted and the appeal papers have been prepared. Appeal before the Hon'ble Income Tax Appellate Tribunal, Hyderabad is being filed on 29<sup>th</sup> May, 2019.

3. What is stated above is true to the best my knowledge.

Sd/-  
Deponent".

3. After hearing the learned DR, we are satisfied that the assessee was prevented by a reasonable cause from filing of the appeal before the Tribunal in time. The delay is accordingly condoned.

4. As regards the merits of the case, brief facts are that the assessee company, which is in the business of manufacture of refractory bricks and mortar, e-filed its return of income on 30.09.2015 declaring loss of Rs.16,16,39,883/-. The case was taken up for scrutiny under CASS and during the assessment proceedings u/s 143(3) of the Act, the assessee was required to file certain details. The assessee filed such details.

5. On perusal of the balance sheet of the assessee, the Assessing Officer noticed that there were outstanding statutory liabilities of Rs.4,84,43,411/- . Therefore, the details of the payments made against such statutory liabilities were called for. After perusal of the details filed by the assessee, the Assessing Officer observed that in its computation of income, the assessee had added back only a sum of Rs.10,86,618/- u/s 43B of the Act and further that the balance statutory liabilities which comes to Rs.4,73,56,793/- were not paid before the due date of filing of the return of income. He accordingly brought it to tax.

6. Further, the Assessing Officer also noticed that the assessee has received interest income of Rs.23,98,370/-, which was not taken into a/c while computing the income of the assessee. When asked to explain, the assessee submitted that the management erroneously omitted to consider the same in its computation of income and therefore, the assessee has no objection to the addition. Accordingly, the sum of Rs.23,98,370/- was also brought to tax.

7. Thereafter, the Assessing Officer initiated penalty proceedings u/s 271(1)(c) of the Act by issuance of notice u/s 274 r.w.s 271(1)(c) of the Act. The assessee submitted its reply. With regard to the addition of Rs.4,73,56,793/-, the assessee submitted that the entire amount does not pertain to the relevant A.Y and due to the change in the management of the company, certain omissions have taken place in the preparation of the compliances to the statutory obligations. The assessee also submitted that mere revision of the figures does not automatically amount to furnishing of any inaccurate particulars of income.

With regards to the addition of Rs.23,98,370/-, the assessee did not furnish any explanation.

8. The Assessing Officer, observing that the assessee had agreed for the additions of Rs.23,98,370/- and did not come up with any explanation for not adding the unpaid statutory liabilities to the income, while computing the total income, opined that the assessee has furnished inaccurate particulars of income. Similarly, with regard to the addition of Rs.23,98,370/- the Assessing Officer held that but for the scrutiny, the same would not have come out and the assessee has sought to avoid the payment of tax. Thus observing, he levied the minimum penalty of Rs.1,61,43,100/- being 100% of the tax sought to be avoided.

9. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the Assessing Officer and the assessee is in second appeal before the Tribunal by raising the following grounds of appeal:

*“1. The order of the learned CIT (A) is against law, weight of evidence and probabilities of the case.*

*2. The learned CIT(A) ought to have appreciated the submissions made by the assessee and sought to have held that the penalty proceedings u/s 271(1)(c) were not validly initiated in the case of the assessee and consequently, the learned CIT (A) ought to have quashed the impugned order passed u/s 271(1)(c) of the Act.*

*3. The learned CIT (A) erred in not accepting the submission of the assessee that most of the amounts of outstanding statutory liabilities pertained to earlier years and were not liable to be disallowed even while completing the assessment and as such the levy of penalty by taking into a/c such liabilities of earlier years was not correct both legally and also on the facts of the assessee's case.*

*4. The learned CIT (A) erred in not appreciating the submissions made by the assessee that the omission to disallow outstanding liabilities and to include interest*

*income while computing loss were bonafide omissions and consequently the levy of penalty was not valid in the light of explanation 1 to section 271(1)(c) of the Act.*

*5. For the above grounds and such other grounds that may be urged at the time of hearing, the appellant prays that the appeal be allowed. The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary".*

10. The learned Counsel for the assessee reiterated the submissions made before the authorities below and submitted that the assessee had filed an explanation before the Assessing Officer which has not been found to be incorrect and therefore, the penalty should not have been levied by the Assessing Officer. He further submitted that the notice u/s 274 r.w.r 271(1)(c) is also not valid because the Assessing Officer did not strike off the irrelevant portion of the notice for levy of penalty. In support of his contentions that where the notice is not valid, the consequent penalty is not sustainable, he placed reliance upon the decision of the Hon'ble Andhra Pradesh High Court in the case of Pr. CIT vs. Smt. Baisetty Revathy in I.T.T.A. NO.684 of 2016, dated 13<sup>th</sup> July, 2017. As regards the merits of the issue,, he submitted that the sum of Rs.4,73,53,793/- which is shown to be outstanding in the financial year 2015-16, consists the statutory liabilities of the earlier years and therefore, they ought not to have been disallowed in the relevant assessment year. In support of such contention, he drew our attention to page 111 of the paper book filed by the assessee to show that the outstanding dues were for the periods (i) April, 2004 to March,2008, (ii) June, 2008 to September, 2009, (iii) July 2005 to September, 2006, (iv) May 2007 to September, 2007 and (v) 2003 to December, 2007. Similarly, the service tax was also due during the financial years 2003 to 2010. Therefore, according to him, they were not

pertaining to the relevant A.Y and hence no disallowance u/s 43B ought to have been made during the relevant A.Y. Consequently, and the penalty u/s 271(1)(c) is also not leviable.

11. Further, in response to the direction of the Tribunal during the course of hearing on 3.8.2021, to furnish the details of payments of these statutory liabilities, the assessee has filed the following details:

*"The Hon'ble Tribunal during the course of hearing has directed the Counsel for the Appellant to furnish the payments made by the Appellant in the subsequent period out of the amount disallowed of Rs.4,73,56,793/- . The appellant is herewith submitting the following information which is readily available in respect of the payments made during financial 2015-16 out of the amount disallowed u/s 43B of the Act.*

Details	Closing balance as on 31.3.2015 (Rs.)	Payments made during financial year 2015-16 (Rs.)	Mode of payment
CST Payable 2014-15	2,55,162	2,38,087	Indian Overseas Bank (IOB)
ESI Co's contribution	20,35,363	27,04,920	Issued posted dated cheques
Excise provision on closing stocks	40,09,107	40,09,107	Reversed
Professional Tax	42,345	16,350	Cash
TDS employees	32,760	36,000	IOB
TDS Contractors	53,036	57,401	IOB
TDS on Professional	52,609	55,805	IOB
TDS on rent	80,677	90,162	IOB
Total	65,61,059	72,07,832	

*It is respectfully submitted that Excise Provision on closing stock as on 31.03.2015 was a provision and hence the same is reversed as on 1.4.2015. Except that , these are the only payments made by the Appellant during financial year 2015-16, from out of the amount outstanding of Rs.4,73,56,793/-.*

*It is prayed that the appeal may be allowed by deleting the penalty of Rs.1,61,43,100/-".*

12. Thus, the assessee prayed for deleting the penalty levied u/s 274 r.w.s 271(1)(c).

13. The learned DR, on the other hand, relied upon the orders of the Assessing Officer and submitted that the assessee had not filed its return of income for the relevant A.Y disclosing its income and but for the scrutiny, the above issues would not have come to the notice of the Department and therefore, it is a clear case of concealment of income as well as furnishing of inaccurate particulars. Therefore, he justified the non-striking off of irrelevant portion in the notice u/s 274 r.w.s. 271(1)(c) of the Act. Further, he also submitted that the assessee has not disclosed the interest income of Rs.23,98,370/- and no explanation was offered by the assessee for non such disclosure and hence, according to him penalty on this a/c is also justified.

14. Having regard to the rival contentions and the material on record, we find that as far as the first issue of validity of notice u/s 274 r.w.s 271 (1)(c) for non-striking off of the irrelevant portion of the notice is concerned, the Assessing Officer has struck off paras 2 & 3 of the notice which are irrelevant to the issue and since according to the Assessing Officer, the assessee concealed the income and also furnished inaccurate particulars of income, he did not strike off any portion of such para. Therefore, the said ground of appeal No.2 of the assessee is not sustainable. It is accordingly dismissed.

15. As regards the merits of the issue, we find that the assessee has not offered the interest income to tax and therefore, the penalty on such addition is sustainable. However, with regard to the disallowance of Rs. 4,73,56,793/- on which the penalty is levied, we find some strength in the argument of the assessee that these are pertaining to the earlier A.Ys. When they did not pertain

to the relevant A.Y, the penalty on such disallowance is not sustainable. In view of the same, we direct the Assessing Officer to verify the statutory liabilities which pertain to the earlier years and on such items, no penalty u/s 271(1)(c) of the Act shall be levied.

16. In the result, assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the Open Court on 30<sup>th</sup> August, 2021.

**Sd/-**

**Sd/-**

<b>(LAXMI PRASAD SAHU)</b> <b>ACCOUNTANT MEMBER</b>	<b>(P. MADHAVI DEVI)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 30<sup>th</sup> August, 2021.

*Vinodan/sps*

Copy to:

S.No	Addresses
1	Raasi Refractories Ltd, H.No.15-145/9, Kondandramnagar, Near Sharada Talkies, Saroornagar, Hyderabad 500060
2	Dy.CIT, Circle 3(1) Hyderabad
3	CIT (A)-3, Hyderabad
4	Pr. CIT -3, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

*By Order*