

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD ' A ' BENCH, HYDERABAD.**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
(Through Virtual Hearing)**

**ITA No.1828/Hyd/2019
(Assessment Year : 2009-10)**

M/s. SPR Infrastructure (India) Limited,
8-2-293/82/A22, Sourya Soudha,
Plot 22, Road No.5, Jubilee Hills,
Hyderabad-500 033
PAN AACCD4913GAppellant.

Asst. Commissioner of Income Tax,
Circle 3(2), Hyderabad.Respondent.

Appellant By : Shri P. Murali Mohan Rao.
Respondent By : Shri Sunku Srinivas (D.R)

Date of Hearing : 19.05.2021.

Date of Pronouncement : 24.05.2021.

O R D E R

Per Laxmi Prasad Sahu, A.M. :

This assessee's appeal arises from the
Commissioner of Income Tax (Appeals)-3, Hyderabad
order dt. passed in case No.1158/ACIT, Cir.3(2)/CIT(A)-

3/2012-13 in proceedings under Section 221(1) of Income Tax Act, 1961 ('the Act').

2. The brief facts of the case are that the assessee company filed Return of Income for the A.Y. 2009-10 on 29.09.2009 without paying self-assessment tax u/s.140A of the Act declaring total income of Rs.1,17,83,190. Subsequently, on the scrutiny the assessee's income was determined by the Assessing Officer of Rs.17,34,74,851 and consequential demand on the income and interest thereon was determined at Rs.8,51,87,390. The assessee could not pay the demand within the stipulated period, the Assessing Officer has passed order u/s. 221(1) of the Act levying penalty of Rs.1 lac. Therefore the assessee deemed to be default as per Section 220 of the Income Tax Act, 1961 ('the Act') and the Assessing Officer has initiated penalty proceedings u/s. 221(1) of the Act. Aggrieved by the order of Assessing Officer, the assessee filed appeal before the CIT(A). In the case on hand, the CIT(A)-III, Hyderabad has allowed the assessee payment of taxes in

instalments in spite of the assessee did not paid in instalment. The CIT(A) sustained the penalty of Rs.1 lac levied u/s. 221(1) of the Act. Aggrieved by the order of CIT(A), the assessee filed an appeal before us.

3. The Id. AR has reiterated the submissions made before the authorities below. Further, the learned A.R. of the assessee submitted that the CIT(A) has erred in sustaining the penalty of Rs.1 lac without appreciating the assessee's financial constraints and submitted case laws for our consideration :

i) DCIT Vs. Anjaneya Life Care Ltd. ITA No.6440/Mum/2013 Dt.25.03.2015.

ii) Sama Ramachandra Reddy Vs. DCIT ITA No.164/Hyd/2018 Dt.11.06.2020.

iii) Heddle Knowledge (P) Ltd. Vs. ITO ITA No.7509/Mum/2011 Dt.19.01.2018.

iv) PLR Projects Pvt. Ltd. Vs. ACIT ITA No.2408/Hyd.2018 Dt.26.04.2019.

Keeping in view of the above decisions (supra), the Id. AR prayed for allowing the appeal of the assessee.

4. The learned D.R. supported the orders of the authorities below and submitted that the case is to be treated as assessee in default because the assessee did not paid the instalments as granted by CIT(A)-III, Hyderabad. Even the assessee was to be paid self-assessment tax before filing the Return of Income. Till date the assessee has not paid the due taxes.

5. After hearing both the parties and perused the material available on record, we observe that the assessee has filed its Return of Income without payment of self-assessment tax and the case was assessed u/s. 143(3) of the Act and there was a total demand raised by the revenue at Rs.8,51,87,390 which was not paid by the assessee as per demand notice issued by the Assessing Officer. The assessee also sought for payment of tax in instalments before the CIT(A)-III, Hyderabad and he allowed the assessee for payment in instalments but even the assessee did not pay the instalments granted by the

CIT(A)-III, Hyderabad. The Assessing Officer has passed order u/s. 221 of the Act by observing as under :

“ ORDER U/S.221(1) OF THE I.T. ACT, 1961 :

It Is seen from the records of the above assessee company that the following amount of tax arrears remain to be paid:

<i>Asst. Year</i>	<i>Tax & Interest (Rs.)</i>	<i>Nature</i>
<i>2009-10</i>	<i>8,51,87,390</i>	<i>Regular Tax</i>
<i>2009-10</i>	<i>1,00,000</i>	<i>Penalty u/s.271B</i>
<i>2009-10</i>	<i>10,000</i>	<i>Penalty u/s.271(1)(b)</i>

Vide this office letter dated 7-2-2012, the assessee was directed to make arrangements for payment of the above unpaid taxes, immediately, failing which it was intimated that coercive steps for collection of the taxes would be taken. In response, the assessee has filed a petition seeking stay of collection of demand u/s 220(3) before the CIT-III, Hyderabad. In response, the CIT-III, Hyderabad has passed an order u/s 220 of the I.T.Act, 1951 dated 1-3-2012 as follows:

“2. On careful consideration of the facts of tile case, it is directed that the assessee shall pay the demand as per the following schedule and furnish proof of such payment to the Assessing Officer within that period.

<i>Amount (Rs.)</i>	<i>Due Date</i>
<i>15 lakhs</i>	<i>15.3.2012</i>
<i>15 lakhs</i>	<i>25.3.2012</i>
<i>20 lakhs</i>	<i>20.4.2012</i>

3. *Subject to the above, the balance demand shall be kept in abeyance till May 15th 2012 or disposal of the first appeal, whichever is earlier.”*

However, it is seen that the company has not complied with the directions of the CIT by not paying the instalments as per the payment schedule, given to it. Hence, a letter, dated 16-3-2012 was addressed, to the assessee intimating of its default and non compliance with the directions of the CIT and thereby the assessee was treated as an 'assessee in default'. Hence, it was, proposed once again to take coercive action to recover the taxes due from the comp-any and the company was given an opportunity to pay its tax arrears on or before 19-3-2012 before any coercive action was to be taken. The company has, however, not availed this opportunity also and has not paid the tax arrears even as on date.

Hence, a notice u/s 221 dated 09-05-2012 was issued to the company intimating it of its tax arrears as above and asking it to show cause why a penalty u/s 221 should not be levied for non payment of taxes. In this connection, an opportunity of hearing was accorded to the assessee to appear on 22-5-2012 without fall and offer its explanation, If any. The company has, however, once again preferred not to avail this opportunity also and has not appeared before the undersigned nor has it given any representation.

Hence, it is now fairly construed that the company has no explanation whatsoever to offer for its non payment of taxes. I am of the opinion that it is a fit case for imposition of penalty u/s 221 of the I.T.Act, 1961. Accordingly, I levy

a penalty of Rs.1,00,000/- u/s 221 of the I.T.Act, 1961. This penalty amount should be paid as per the demand notice enclosed.”

From the above order passed by the Assessing Officer which has been confirmed by the CIT(A), the assessee was granted opportunity by the revenue authorities but the assessee did not enjoy the facilities. We observe that the assessee has filed its return declaring an income of Rs.1,17,83,190. Therefore he was required to pay advance tax as per the provisions of the Income Tax Act, the assessee was engaged in the business for whole year and he was aware of the business carried on by him of day to day activities even if he did not pay the advance tax. He should pay the taxes along with interest when he filed Return of Income. But the assessee did not comply the provisions of Income Tax Act. The Id. AR of the assessee during the course of hearing stated that the assessee was in financial constraint whereas the business activity carried on by the assessee whole year and Return of Income having been filed much after the end of the year.

But the AR of the assessee could not explain fund availability position on the due date of payment of advance tax as well as on the date of self-assessment tax i.e. date of filing of return. We also observe from the order of the authorities below, the assessment was completed u/s. 144 by rejecting the books of accounts of the assessee which clearly shows that the intention of the assessee was not in favour of the revenue for the payment of tax. It clearly shows that the assessee was not paying the taxes within the stipulated time. Hence the Assessing Officer has rightly imposed the penalty u/s. 221(1) of the Income Tax Act after considering that the assessee is in default for payment of tax. We did not find any substance on the submission of the Authorised Representative. The case laws (supra) relied on by the learned Authorised Representative are distinguishable on the facts of the present case on hand. As per our considered opinion, the CIT(A) has rightly confirmed the order of the Assessing

Officer for imposing penalty u/s. 221(1) of the Income Tax Act, 1961.

4. In the result - the appeal of the assessee is dismissed.

Order pronounced in the open court on 24th May,2021.

Sd/-

(S.S. GODARA)
Judicial Member

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Hyderabad, Dt. 24.05.2021.

* Reddy gp

Copy to :

1.	M/s. SPR Infrastructure (India) Limited, 8-2-293/82/A22, Sourya Soudha, Plot 22, Road No.5, Jubilee Hills, Hyderabad-500 033
2.	ACIT, Circle 3 (2), Hyderabad.
3.	Pr. CIT-3, Hyderabad.
4.	C I T(Appeals)-3, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.