

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC, CHANDIGARH**

BEFORE MS. DIVA SINGH, JUDICIAL MEMBER

**ITA No. 250 & 251/Chd/2018**  
(Assessment Year: 2011-12)

Mr. Surinder Pal Singh  
S/o Om Parkash Singh,  
Flat No. 1, FF  
Ekta Vihar, Simran Apartments  
Baltana, Mohali

Vs.

The ITO  
Ward-6(4)  
Mohali

PAN No. ALZPS3021K

(Appellant)

(Respondent)

Assessee By : Shri Neeraj Arora  
Revenue By : Shri Manoj Kumar  
Date of hearing : 19/06/2018  
Date of Pronouncement : 25/06/2018

**ORDER**

**PER DIVA SINGH, J.M.**

By these present appeals the Assessee assails the correctness of the separate orders dt. 19/12/2017 of CIT-1, Chandigarh wherein penalty imposed under section 271(1)(c) and 271 B has been upheld.

2. Both the parties have been heard.

**ITA 250/Chd/2018:**

3. The Ld. AR inviting attention to the assessment order as well as the penalty order under section 271(1)(c) challenged in ITA No. 250/Chd/2018 submitted that for the contract receipts of Rs. 1,06,50,417/-, TDS amounting to Rs. 2,13,008/- from Wipro Ltd. and Technovat Esolutions Pvt. Ltd. already stood deducted. Accordingly, it was his submission that there was no occasion for the assessee to even consider the possibility of concealing the income. Inviting attention to the assessment order paras 3 & 4 it was submitted that the assessee's income from the said activity could not be disclosed inadvertently on account of a mistake of the filing clerk as the assessee due to his illness remained preoccupied. It was submitted that before the AO reliance had been placed on the Medical Certificate filed from Raghav Hospital, Baltana which showed that from the

period 28/09/2011 to 17/10/2011 and again from 01/01/2012 to 15/01/2012 the assessee remained medically unfit.

4. Addressing the issue on merits it was submitted that as per record the assessee had claimed that there was net loss of Rs. 9,208/- from the said activity. The books of accounts of the assessee stood rejected and net profit @ 10% was estimated. It was submitted that although the assessee has not contested the issue further, however the fact remains that for the contract receipts if the net profit rate of 8% is applied then the TDS of Rs. 2,13,008/- which stood deducted was itself much more than the actual income. It was submitted that simply because addition is not contested for peace of mind the mere fact in these stated facts does not per se attracted the penalty. Accordingly it was his prayer that the penalty imposed under section 271(1)(c) may be quashed as it was a bonafide mistake of the filing clerk. On query it was clarified that the assessee is not a habitual defaulter.

5. The Ld. Sr. DR relies upon the authorities below.

6. I have heard the submissions and perused the material available on record. It is seen that the assessee is engaged in the business of Tour and Travels and has returned income from salary. Admittedly the contract receipts from these two above mentioned specific concerns was not included by the assessee in its return. The assessee has consistently claimed a bonafide mistake on account of his filing clerk which due to the assessee's illness could not be detected. I find that the very nature of income is such for which TDS has been deducted. In the peculiar facts it is seen the explanation supported by documentary evidences supports the claim of the assessee of a bonafide mistake which remained undetected due to the assessee's illness. Accepting the explanation on going through the records I am of the view that in the peculiar facts and circumstances of the present case penalty imposed and upheld under section 271(1)(c) deserves to be quashed as neither it is a case of concealment of income nor can it be said to be a case of filing of inaccurate particulars of income. Accepting the bonafide explanation of inadvertent mistake the penalty is directed to be quashed. Said order was pronounced in the open Court on the date of hearing itself.

7. In result appeal of the assessee in ITA No.250/Chd/2018 is allowed.

**ITA No. 251/Chd/2018:**

8. Ld. AR inviting attention to the very same record submitted that the assessee could not file audited copies of balance sheet and P&L account mandated under section 44AB alongwith the return due to reasons beyond his control. These were filed only in the course of the assessment proceeding before the AO. In the penalty proceedings under section 271B as well as before the CIT(A) it has been submitted relying upon the medical certificate from Raghav Hospital, Baltana that the mistake has inadvertently occurred on account of assessee's illness and thus remaining preoccupied by illness the mistake of the filing clerk could not be detected. Duly audited accounts it was submitted have been filed in the course of the assessment proceedings accordingly it was his prayer that the penalty imposed may be quashed.

9. Ld. SR. DR relies upon the orders.

10. I have heard the submission and perused the material available on record. On going through the same I am of the view that in the peculiar facts and circumstances of the present case the penalty imposed and upheld under section 271B deserves to be quashed. The tax authorities have rejected the claim of the assessee on the reasoning that the explanation is an afterthought. No reasoning argument or evidence has been placed on record to rebut the claims or supported the conclusions drawn. Being satisfied by the bonafide explanation consistently offered on behalf of the assessee which has not been upset by any forum the penalty amounting to Rs. 53,252/- is directed to be quashed. The said order was pronounced in the open Court at the time of hearing itself

11. In the result appeal of the assessee is allowed.

12. In the result ITA 250/Chd/2018 & ITA No.251/Chd/2018 are allowed.

**Sd/-  
(DIVA SINGH)  
JUDICIAL MEMBER**

Dated : 25/06/2018

DNS/AG

Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR