

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “D” BENCH**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

**ITA. Nos: 1957 to 1960/AHD/2017  
(Assessment Years: 2010-11 to 2013-14)**

<b>M/s Gurukrupa Developers Mahavir Complex, Sapna Road, Opposite FCI Godown, Godhra-389001</b>	<b>V/S</b>	<b>The Deputy Commissioner of Income Tax Central Circle-1, Baroda</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**PAN: AAIFG8293P**

**Appellant by : Submission  
Respondent by : Shri Vinod Tanwani, Sr. D.R.**

**(आदेश)/ORDER**

Date of hearing : 05 -12-2019

Date of Pronouncement : 09 -01-2020

**PER MAHAVIR PRASAD, JUDICIAL MEMBER**

1. These four appeals filed by the Assessee are directed against the order of the Ld. CIT(A). Since in all these four appeals assessee is common only amount and

assessment years are different but for the sake of brevity, we would like to dispose of all four appeals together. The assessee has taken following grounds of appeal:

**1.0 ORDER PASSED UNDER SECTION 271 (1) (C) IS BAD IN LAW.**

1.01 *On the facts and circumstances of appellant's case and in law, the Id. CIT (Appeal) has erred to appreciate the initiation of penalty proceedings is bad in law as it was silent on whether it is concealment of income or furnishing of inaccurate particulars of income as both can not exist at the same time.*

1.02 *Your appellant therefore prays Your Honour to hold so now and treat the penalty proceedings as bad in law.*

**2.00 IMPOSITION OF PENALTY TO THE TUNE OF RS. 4, 28,607 /-ON ADDITION MADE ON ACCOUNT OF UNDISCLOSED INCOME.**

2.01 *On the facts and circumstances of appellant's case and in law, the Id. CIT (Appeals) has erred in confirming the levy of penalty to the tune of Rs. 4,28,607 /- under section 271 (1)( c) of the Act by the Id. AO on addition made on account of disclosure of additional income while filing return as part of search proceedings.*

*While doing so, the Id. CIT (Appeals) failed to appreciate that there was no addition made by the Id. AO during the course of assessment proceedings u/s 143(3) r.w.s 153A of the Act to the returned income under section 153A of the Act, and therefore appellant cannot be treated to be assessee concealing income.*

2.02 *Your appellant prays to hold so now and delete the impugned penalty.*

2. Facts of the case as emanated from the penalty order:

*"A search/survey u/s 132/133A of the Income Tax Act was conducted in the Dhanjimama Group of cases on 03.07.2012. In the search/survey proceedings, based on documents found, the partner of the assessee firm on behalf of the firm has disclosed an amount of Rs.13,87,086/- for the year under consideration. During the course of search, certain incriminating documents were found and seized. On scrutiny of the documents so seized/impounded, it was noticed that certain documents were found to be belonging to the assessee and accordingly, the proceedings u/s 153C of the Act were initiated. Accordingly, notice u/s 153C r.w.s. 153A was issued on 06.03.2014 and in compliance thereto the assessee filed its return of income on 18.03.2014 declaring total income at Rs.13,87,076/-. The assessee has made a disclosure of Rs. 13,87,076/- in the return of income filed in response to notice u/s 153C of the I. T. Act. Thereafter, notices u/s 143(2) & 142(1) of the Act were issued and served to the assessee. Subsequently, the order u/s 153C r. w. s. 153A r.w.s. 143(3) of the Act was passed on 20.02.2015 at the assessed income of Rs. 13,87, 076/-."*

3. Against the imposition of penalty, assessee preferred first statutory appeal before the ld. CIT(A) who confirmed the action of the ld. A.O.
4. Now assessee has come before us.
5. In this case, a search /survey u/s 132/133A was conducted in the Dhanjimama Group of cases on 03.07.2012. In the search/survey proceedings, based on documents found, the partner of the assessee firm on behalf of the firm has disclosed an amount of Rs. 13,87,086/- for the year under consideration.
6. The revenue contention is that the disclosure of Rs. 13,87,076/-was made due to search and survey at the premises of Dhanjimama Group were assessee is partner of the firm.
7. On the other hand, ld. A.R. contention is that no search and survey has taken place at the premises of the assessee and assessee has voluntarily disclosed the income of the department. Thus, in such case, penalty cannot be imposed.
8. And further stated that in a recent decision of Supreme Court in the case of Rajkumar Gulab Badgular 111 Taxmann.com 257 wherein it is held that wherein the returned income has been accepted u/s 153C and therefore, it is held that in such case, penalty cannot be imposed.
9. Ld. A.R. also cited an order of Co-ordinate Bench in the matter of Parag V. Chugh vs. DCIT in ITA Nos. 581 to 586/Ahd/2018 wherein in similar facts and circumstances of the case ITAT has decided the matter in favour of the assessee with following observation:

*17. The assessee has disclosed additional income of 6,34,172.00 in pursuance to the return filed under section 153A of the Act. The AO accordingly on such additional income disclosed by the assessee levied the penalty at the rate of 10% of additional income*

being 63,417.00 under the provisions of section 271AAB of the Act. The learned CIT (A) also confirmed the order of the AO.

Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

18. The learned AR before us submitted that there was no undisclosed income available to the assessee within the meaning of explanation (c) to section 271 AAB of the Act. Therefore, there cannot be any penalty.

19. On the other hand, the learned DR vehemently supported the order of the authorities below.

20. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that the explanation © to section 271AAB of the Act has a direct bearing on the on the issue on hand which reads as under:

"48[Penalty where search has been initiated.

271AAB. (1) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of July, 2012 49[but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President50], the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,--

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(c) "undisclosed income" means--

(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has--

(A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or (B) otherwise not been disclosed to the 54[Principal Chief Commissioner or] Chief Commissioner or 54[Principal Commissioner or] Commissioner before the date of search; or

(ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.]"

From the above provision, it is clear that the penalty shall be imposed under section 271AAB of the Act where there is undisclosed income within the meaning of the

*explanation © to 271AAB of the Act. However, we note that there was no documentary evidence found by the search team suggesting that there was any undisclosed income of the assessee. As such the income disclosed by the assessee was voluntarily without having found any document in the course of search. We also note that there no reference made by the authorities below to the documents of incriminating nature having bearing on the income of the assessee in their respective orders. The Id. DR has not advanced any arguments against the contentions raised by the Id. AR for the assessee. In holding so we draw support and guidance from the order of the Tribunal in the case of ACIT Vs. Marvel Associates reported in 170 ITD 353 wherein it was held as under:*

*"9. Penalty u/s 271AAB attracts on undisclosed income but not on admission made by the assessee u/s 132(4). The AO must establish that there is undisclosed income on the basis of incriminating material. In the instant case a loose sheet was found according to the A.O., it was incriminating material evidencing the undisclosed income. In the penalty order the AO observed that loose sheet shows the cost per square feet is Rs.3571/- per sft. and assessee stated to have submitted in sworn statement cost per sq. feet at Rs.2200/- to Rs.2300/- per sq. feet. However neither the AO nor the Ld.CIT(A) has verified the cost of construction with the books and projections found at the time of search. The counsel argued that it was mere projection but not the actuals. The write up heading also mentioned that summary of the projected profitability statement. There is no evidence to establish that projections reflected in the loose sheet is real. No other material was found during the course of search indicating the undisclosed income. There was no money, bullion, jewellery or valuable article or thing or entry in the books of accounts or documents transactions were found during the course of search indicating the assets not recorded in the books of accounts or other documents maintained in the normal course, wholly or partly. The revenue did not find any undisclosed asset, any other undisclosed income or the inflation of expenditure during the search/ assessment proceedings. Though a loose sheet of page No.107 of Annexure A/GS/MA/1 was found that does not indicate any suppression of income but it is only projection of profit statement. The amount of Rs.3571/- mentioned in the projections refers to cost and profit which is approximate sale price but not the cost as stated by the AO in the penalty order. The cost of construction in the projections projected at Rs.2177/- which is in synch with the statement given by the assessee. The AO was happy with the disclosure given by the assessee and did not verify the factual position with the books of accounts and projections and bring the evidence to unearth the undisclosed income. Neither the A.O. nor the investigation wing linked the cost of profit or cost of asset to the entries in the books of accounts or to the sales conducted by the assessee to the sale deeds. Therefore, we are unable to accept the contention of the revenue that the loose sheet found during the course of search indicates any undisclosed income or asset or inflation of*

*expenditure. The Hon'ble ITAT Delhi Bench in the case of Ajay Sharma v. Dy.CIT [2013] 30 taxmann.com 109 held that with respect to the addition on account of alleged receivables as per seized paper, there is no direct material which leads and establishes that any income received by the assessee has not been declared by the assessee. An addition has been made on the basis of loose document, which did not closely prove any concealment or furnishing of inaccurate particulars by the assessee. Hence penalty u/s 158BFA (2) of the Act is not leviable. The facts of the assessee's case shows that there was no undisclosed income found during the course of search and no incriminating material was found, hence we hold that there is no case for imposing penalty u/s 271AAB of the Act, accordingly, we set aside the order of the lower authorities and cancel the penalty u/s 271AAB of the Act."*

*In view of the above, we are not convinced with the penalty levied by the authorities below. Hence we reverse the order of the authorities below and direct the AO to delete the penalty levied by him under section 271 AAB of the Act. Hence the ground of appeal of the assessee is allowed.*

*21. In the result the appeal of the assessee is allowed.*

*22. In the combined result, all the six appeals filed by the assessee are allowed.*

10. Respectfully following the judgment of Hon'ble Supreme Court and in parity with the Co-ordinate Bench of ITAT, we allow the appeal of the assessee.

11. Now we come to ITA No. 1958/Ahd/2017 for A.Y. 2011-12, assessee has taken following grounds of appeal:

**1.0 ORDER PASSED UNDER SECTION 271 (1) (C) IS BAD IN LAW.**

*1.01 On the facts and circumstances of appellant's case and in law, the Id. CIT (Appeal) has erred to appreciate the initiation of penalty proceedings is bad in law as it was silent on whether it is concealment of income or furnishing of inaccurate particulars of income as both can not exist at the same time.*

*1.02 Your appellant therefore prays Your Honour to hold so now and treat the penalty proceedings as bad in law.*

**2.00 IMPOSITION OF PENLATY TO THE TUNE OF RS. 10,97,850 /-ON ADDITION MADE ON ACCOUNT OF UNDISCLOSED INCOME.**

*2.01 On the facts and circumstances of appellant's case and in law, the Id. CIT (Appeals) has erred in confirming the levy of penalty to the tune of Rs. 10,97,850/- under section 271 (1)( c) of the Act by the Id. AO on addition made on account of disclosure of additional income while filing return as part of search proceedings.*

*While doing so, the Id. CIT (Appeals) failed to appreciate that there was no addition made by the Id. AO during the course of assessment proceedings u/s 143(3) r.w.s 153A of the Act to the returned income under section 153A of the Act, and therefore appellant cannot be treated to be assessee concealing income.*

*2.02 Your appellant prays to hold so now and delete the impugned penalty*

12. Since on similar facts and circumstances of the case, we have given relief to the assessee in connected ITA No. 1957/Ahd/2017. Thus, in parity with the said appeal, we allow the appeal of the assessee.

13. Now we come to ITA No. 1959/Ahd/2017 for A.Y. 2021-13, assessee has taken following grounds of appeal:

**1.0 ORDER PASSED UNDER SECTION 271AAB IS BAD IN LAW.**

*1.01 On the facts and circumstances of appellant's case and in law, the Id. CIT (Appeal) has erred to appreciate the initiation of penalty proceedings is bad in law as it was silent on whether it is concealment of income or furnishing of inaccurate particulars of income as both cannot exist at the same time.*

*1.02 . Your appellant therefore prays Your Honour to hold so now and treat the penalty proceedings as bad in law.*

**2.00 IMPOSITION OF PENLTY TO THE TUNE OF RS. 4, 01,836 /-UNDER SECTION 271 AAB OF THE INCOME TAX ACT, 1961.**

*2.01 On the facts and circumstances of appellant's case and in law, the Id. CIT (Appeals) has erred in confirming the levy of penalty to the tune of Rs. 4,01,836 /- under section 271 AAB of the Act by the Id. AO on disclosure of additional income in the return of income filed under section 153Aof the Income Tax Act, 1961 .*

*While doing so, the Id. CIT (Appeals) failed to appreciate that the additional income did not have the character of undisclosed income admitted during the course of search proceedings. Additional income declared in the returned income is a voluntary act and therefore appellant cannot be held guilty for levying penalty under section 271 AAB of the Act.*

*2.02 Your appellant prays to hold so now and delete the impugned penalty.*

14. Since similar facts and circumstances of the case, we have given relief to the assessee in connected ITA No. 1957/Ahd/2017. Thus, in parity with the said appeal, we allow the appeal of the assessee.

15. Now we come to ITA No. 1960/Ahd/2017 for A.Y. 2013-14, assessee has taken following grounds of appeal:

**1.0 ORDER PASSED UNDER SECTION 271AAB IS BAD IN LAW.**

*1.01 On the facts and circumstances of appellant's case and in law, the Id. CIT (Appeal) has erred to appreciate the initiation of penalty proceedings is bad in law as it was silent on whether it is concealment of income or furnishing of inaccurate particulars of income as both cannot exist at the same time.*

*1.02 . Your appellant therefore prays Your Honour to hold so now and treat the penalty proceedings as bad in law.*

**2.00 IMPOSITION OF PENLTY TO THE TUNE OF RS. 1,06,717 /-UNDER SECTION 271 AAB OF THE INCOME TAX ACT, 1961.**

*2.01 On the facts and circumstances of appellant's case and in law, the Id. CIT (Appeals) has erred in confirming the levy of penalty to the tune of Rs. 1,06,717 /- under section 271 AAB of the Act by the Id. AO on disclosure of additional income in the return of income filed under section 153Aof the Income Tax Act, 1961 .*

*While doing so, the Id. CIT (Appeals) failed to appreciate that the additional income did not have the character of undisclosed income admitted during the course of search proceedings. Additional income declared in the returned income is a voluntary act and therefore appellant cannot be held guilty for levying penalty under section 271 AAB of the Act.*

*2.02 Your appellant prays to hold so now and delete the impugned penalty.*

16. Since similar facts and circumstances of the case, we have given relief to the assessee in connected ITA No. 1957/Ahd/2017. Thus, in parity with the said appeal, we allow the appeal of the assessee.

17. In the result, all four appeals of the assessee are allowed and we direct the A.O. to delete the penalty.

Order pronounced in Open Court on 09 - 01- 2020

Sd/-

**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER True Copy**  
Ahmedabad: Dated 09/01/2020

Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad