

IN THE INCOME-TAX APPELLATE TRIBUNAL “A” BENCH MUMBAI  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 4823/Mum/2018 (Assessment Year 2009-10)

ITA No. 4824/Mum/2018 (Assessment Year 2010-11)

ITA No. 4825/Mum/2018 (Assessment Year 2011-12)

ITA No. 4826/Mum/2018 (Assessment Year 2012-13)

Amit Chandrakant Sanghvi Flat No. 002, B Wing, Priyanka Complex, Alkote Road, Nalasopara, Thane-401209 <b>PAN: BCGPS2994L</b>	Vs.	DCIT Central Circle-2(1) Mumbai
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Appellant

Respondent

Appellant by : Shri Abhishek Jhunjunwala (AR)

Respondent by : Shri Michael Jerald (DR)

Date of Hearing : 05.02.2020

Date of Pronouncement : 05.02.2020

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This group of four (4) appeal by assessee are directed against the order of Id. Commissioner of Income Tax (Appeals) [CIT(A) dated 11.05.2018 for Assessment Year 2009-10 to 2012-13. In all appeals, the assessee has raised common grounds of appeal. Facts in all years are identical except variation of additions/amount of penalty levied under section 271(1)(c), therefore, all the appeals were clubbed, heard and are decided by common order. For appreciation of fact, the appeal for Assessment Year 2009-10 is treated as lead case. The assessee has raised the following grounds of appeal:

The assessee prefers an appeal against an order dated 11/05/2018 passed by the Learned CIT(A)-48, Mumbai on following amongst other grounds, each of which is without prejudice to any others:

1. On the facts and circumstances of the case, the Ld. CIT(A) erred in confirming the penalty order u/s.271(1)(c) is invalid and void-initio for the reason that the notice u/s.274 dated 29/12/2016 was issued in mechanical manner without specifying the reason for initiation of penalty.
2. On the facts and circumstances of the case, the learned CIT(A) erred in confirming the penalty u/s. 271 (1) (c) of the Income Tax Act, 1961 of Rs. 166319/- being 100 percent of the tax sought to be evaded without considering the facts of the case.
3. The appellant craves leave to add, alter, amend or modify any or all grounds till the disposal of the appeal.

2. The assessee has raised further additional grounds of appeal:

The appellant prefers an appeal against an order 11/05/2018 passed by Ld. Commissioner of Income Tax(Appeal)48, Mumbai on following amongst other grounds each of which are without prejudice to any other :-

- 1.0 On facts and circumstances of the case and in law, the penalty levied u/s.271(1)(c) is bad-in-law since Ld. AO, in assessment order, had not intimated the specific charge of "Concealment of income" or "Furnishing inaccurate particulars of income";
- 2.0 Without prejudice, Ld. CIT(A) erred in confirming the levy of penalty u/s.271(1)(c) of Rs.1,66,319/- at maximum marginal rate on ignoring the fact that the tax sought to be evaded under Explanation- 4(c) to sec.271(1)(c) is of Rs. 71,231/-;

3. Brief facts of the case are that no return of income was filed by assessee for relevant Assessment Year. A search under section 132 was conducted by Investigation Wing on M/s Navjeevan Charitable Trust on 27.10.2014. In the said search action, it was revealed that they have obtained certain accommodation entries. It was further revealed that assessee is one of the parties who has accommodation entries to M/s Navjeevan Charitable Trust

during the relevant Financial Year 2008-09. A survey action was also carried out on assessee on 27.10.2016. During the survey statement of assessee was recorded under section 133A. In the statement, the assessee admitted that assessee through its proprietary concern provided accommodation entry to Navjeevan Charitable Trust. On the basis of search and survey action, a notice under section 153C was issued to the assessee. In response to the notice, the assessee filed return of income on 10.05.2016 declaring income of Rs. 8,940/-. During the assessment the Assessing Officer noted that the assessee provided the accommodation entries of Rs. 5.38 crore M/s Navjeevan Charitable Trust. The Assessing Officer on the basis of statement of the assessee recorded during the survey made addition @ 1% of commission on accommodation entries provided to M/s Navjeevan Charitable Trust. No further appeal against the said addition was filed by assessee.

4. The Assessing Officer initiated penalty under section 271(1)(c). Notice under section 271(1)© r.w.s. 274 was served upon the assessee. in response to the show cause notice, the assessee filed his reply dated 06.01.2017. The assessee in reply stated that during the survey action, he has fully co-operated with the Department and agreed for payment of tax with interest. He has accepted the addition made to his return income wanted to peace and to avoid further litigation. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer levied the penalty @ 300% of the

tax sought to be evaded vide its order dated 09.06.2017. On appeal further appeal before the Id. CIT(A), the quantum of penalty was restricted to 100% of the tax sought to be evaded. The Assessing Officer as well as Id CIT(A) passed the consolidated order for Assessment Year 2009-10 to 2012-13. Further aggrieved, the assessee has filed the present appeal before Tribunal.

5. At the outset of hearing, the Id. Authorised Representative (AR) of the assessee submits that he is furnishing working of tax allegedly sought to be evaded in all Assessment Years. The penalty of 100% is leviable only on the tax sought to be evaded. The working of penalty is not correctly mentioned in all the Assessment Year. The Id. AR of the assessee furnished the following working of tax sought to be evaded:

	<b>Particulars</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>
<b>A</b>	<b>Amount of tax on assessed Income</b>				
	Total income assessed	547,190	488,030	673,550	261,980
	Tax on assessed income	71,231	53,154	70,771	8,444
<b>B</b>	<b>Tax on returned Income</b>				
	Returned Income	8,940	172,730	172,820	214,320
	Tax on returned Income	NIL	1,311	1,321	3,535
<b>C</b>	<b>Tax sought to be evaded (A-B)</b>	<b>71,231</b>	<b>51,843</b>	<b>69,450</b>	<b>4,909</b>

6. On merit, the Id. AR of the assessee submits that the Assessing Officer levied the penalty @ 300% of tax sought to be evaded. However, the Id CIT(A) restricted it to 100% of tax sought to be evaded. The Id. AR of the assessee further submits that the Assessing Officer made addition on estimation basis. The Assessing Officer estimated 1% of commission

income on the entry provided by assessee. There is no dispute on estimated additions to the income of assessee. No appeal was filed by assessee in the quantum assessment. The Id. AR of the assessee further submits that mere not filing appeal against the quantum assessment is not fatal for assessee in contesting on the validity of penalty levied under section 271(1)(c). The Id. AR of the assessee submits that no penalty on estimated addition is justified.

7. On the other hand, the Id. Departmental Representative (DR) for the revenue supported the order of lower authority. The Id. DR further submits that the assessee has accepted the addition in the quantum assessment and no further appeal was filed by assessee, as the assessee has no case on merit.
8. We have considered the submission of both the parties and gone through the orders of authorities below. We have noted that during the assessment, the Assessing Officer made addition on account of commission income on accommodation entry provided to M/s Navjeevan Charitable Trust. The Assessing Officer estimated the income @ 1% of the total accommodation transaction receipt in the Bank statement of proprietary concern of the assessee. The Assessing Officer found that there was total transaction during the year of Rs. 5.38 crore. The Assessing Officer made addition of 1% commission on the entire transaction. No further appeal was filed by assessee against the said addition in the quantum assessment. We are

conscious of the fact that penalty proceeding are separate and independent. The penalty under section 271(1)(c) is not automatic on the basis of additions made or part of the additions sustained in the appeal. In the assessment, the addition can be on the basis of presumption for making estimated addition.

9. Admittedly, the Assessing Officer estimated the addition on account of commission income, on the basis of entire transaction during the year. The Assessing Officer levied the penalty @ 300% without specifying special reason for levying maximum penalty. However, the Id. CIT(A) restricted the penalty @ 100% of the tax sought to be evaded. The co-ordinate bench of Jodhpur Tribunal in ITO vs. Gurunanak Oil Agency [144 TTJ 38 (Jodh.)] held that when the addition are based on estimated basis, the penalty under section 271(1)(c) could not be imposed. Further, the Hon'ble Punjab & Haryana High Court in CIT vs. Dhillon Rice Mills [256 ITR 447(P&H)] held that addition made on estimation basis would not automatically lead to conclusion that there was failure to return the correct income by mean of fraud or gross wilful neglect.

10. In view of the aforesaid discussion, we do not find any justification in levying the penalty under section 271(1)(c). Therefore, we direct the Assessing Officer to delete the penalty.

In the result, appeal of the assessee is allowed.

**ITA No. 4824, 4825 & 4826/Mum/2018 for AY 2010-11 to 2012-13**

11.The assessee has raised identical grounds of appeal. Facts in all appeal are almost identical except variation of figures as noted above. Considering the fact that we have deleted the penalty on similar set of fact in Assessment Year 2009-10, therefore, following the principle of consistency, the appeal for these years are also allowed with similar direction.

12.In the result, all the appeals filed by assessee are allowed.

Order pronounced in the open court on 05 /02/2020.

**Sd/-**  
**SHAMIM YAHYA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 05.02.2020

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**Copy of the Order forwarded to :**

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|--------------------------------------|----------------------------|
| <b>1. Assessee</b>                   | <b>2. Respondent</b>       |
| <b>3. The concerned CIT(A)</b>       | <b>4.The concerned CIT</b> |
| <b>5. DR "A" Bench, ITAT, Mumbai</b> |                            |
| <b>6. Guard File</b>                 |                            |

**BY ORDER,**

**Dy./Asst. Registrar**  
**ITAT, Mumbai**