IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM
आयकरअपीलसं./ITA No.536/SRT/2018
(निर्धारणवर्ष / Assessment Year: (2011-12)
(Virtual Court Hearing)

Pal Gram Hindu Sarvajanik Trust, At 7 Post : Pal, Tal. Choryasi, Dist – Surat – 395005.	**V s.**	The Income Tax Officer, Exemption Ward, Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AAATP 2544 G**		
(Assessee)		**(Respondent)**

Assessee by : Shri Hiren Vepari - CA
Respondent by : Ms.Anupama Singla – Sr.DR

सुनवाईकीतारीख/ **Date of Hearing : 02/07/2021**
घोषणाकीतारीख/**Date of Pronouncement: 29/07/2021**

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by Assessee pertaining to Assessment Year 2011-12 is directed against the order passed by the ld.Commissioner of Income Tax(Appeals)-3, Surat [Ld.CIT(A)] dated 30.05.2018, which in turn arises out of a penalty order passed by the Assessing Officer under section 271(1)(c) of 1the Income Tax Act, 1961 [hereinafter referred to as "the Act"], dated 24.03.2017.

2. Grounds of appeal raised by the Assessee are as follows:

"[1] On the facts and circumstances of the case, the learned CIT(A) was not justified in confirming penalty u/s 271(1)(c) of the Act.

[2] With the Assessing Officer failing to specify in the assessment order as to whether the proceedings were initiated for concealing income or furnishing inaccurate particulars of income, the penalty order was required to be knocked down in view of the decision of the Gujarat High Court in case of Sorathia Engineering Co. Ltd. (282-ITR-642).

[3] The assessee craves leave to add, alter or vary any of the grounds of appeal."

3. The facts of the case which can be stated quite shortly are as follows: During the assessment proceedings, assessing officer noticed that assessee trust had accumulated income from assessment year (A.Y.) 2005-06 onwards for specific purpose but had not utilized it for the same. On being enquired regarding the same, the assessee trust could not furnish any cogent explanation, nor could it furnish copy of the Form 10, which gives the details of such accumulation. Hence, the assessing officer made addition of Rs.11,34,117/-.
During penalty proceedings, the assessing officer was of the view that assessee trust could not furnish any proper explanation. In view of this, assessing officer has levied penalty under section 271 (1)(c) of the Act at Rs.2,00,060/-.

4. On appeal, ld CIT(A) has confirmed the penalty under section 271(1) (c) of the Act. Aggrieved, the assessee is in further appeal before us.

5. Shri Hiren Vepari, Learned Counsel for the assessee, has pointed out that the view of assessing officer is not correct regarding taxability of the accumulated income, as the 5 years as per proviso to section 11 (2) get over in A.Y.2010-11. He also pointed out that assessing officer has made addition and initiated penalty for violation of section 11 (3)(d) of the Act, whereas the penalty is levied in penalty order for violation of section 11 (3) (1) of the Act, as per para-3 of penalty order. The ld Counsel pointed out that penalty notice issued by assessing officer under section 271(1) (c) is defective, so penalty should not be levied. The ld Counsel also argued that penalty in the assessee`s case is levied on Rs.11,34,117/-, which has been on totally incorrect premises, as the said amount represents nothing but statutory 15% of Rs.75,60,782/- being total gross income of the assessee. This is 15% accumulation allowed u/s.11(1)(a) of the Act. This ought to have actually no relevance with accumulation u/s 11(2) of the Act.

6. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

7. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. We have examined the notice under section 271(1) (c) of the Act and observed that assessing officer has not ticked any of the limbs, whether he has initiated the penalty on account of **furnishing inaccurate particulars of income** or **concealment of particulars of income**. For ready reference the penalty notice is reproduced below:

> *" Have without reasonable cause failed, to comply with a notice under section 22 (4)/23(2) of the Indian Income Tax Act, 1922 or under section 142(1)/143(2) of the income tax Act, 1961.*
>
> *.. Have concealed the particulars of your Income or ---------- Furnished inaccurate particulars of such income.*
>
> **** You are hereby requested to appear before me at 11.00 AM in my office within 7 days of receipt of this notice and show cause why an order imposing a penalty on you should not be made under section 271 of the Income tax Act. 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271."*

8. From the above notice for initiation of penalty under section 271(1) (c) of the Act, we see that there is no fix charge whether assessee has concealed the particulars of income or furnished inaccurate particulars of income. That is, assessing officer has not ticked any of the limbs for initiation of the penalty. It is by now well settled that while issuing a notice under section 271(1)(c) of the Act, the Assessing Officer is required to specify as to what is the default on the part of the assessee, as to whether the case is one of furnishing inaccurate particulars, or whether it is a case of concealment of income, or both.

As stated above, no clear finding was given by the assessing officer regarding the invocation of the limb in the penalty notice. We note that Hon`ble Supreme Court in the case of T Ashok Pai - 292 ITR 11 (SC) held that "concealment of income" and "furnishing of inaccurate particulars of income" carry different connotations. From the facts of the present case, it is abundantly clear that Assessing Officer has not fixed the charge on the assessee.

9.We note that assessing officer has made addition and initiated penalty for violation of section 11 (3)(d) of the Act (vide assessment order page no.23), whereas the penalty is levied in penalty order for violation of section 11 (3) (c) of the Act, as per para-3 of penalty order. Therefore, assessing officer is not aware as to what account he has initiated the penalty proceedings. The assessee`s accounts are not rejected by the assessing officer and merely because the assessee could not file Form No. 10 before the Department does not mean that assessee has furnished inaccurate particulars of its income. In the penalty proceedings, so far, what has been lost sight is that penalty is levied on Rs.11,34,117/-, the same has been on totally incorrect premises, as the said amount represents nothing but statutory 15% of Rs.75,60,782/- being total gross income of the assessee. This is 15% accumulation allowed u/s11(1)(a) of the Act. This ought to have actually no relevance with accumulation u/s 11(2) of the Act. Therefore, we are of the view that penalty levied by the assessing officer under section 271(1) (c) of the Act is bad in law and needs to be deleted.

10. If the Income Tax Act is analysed, it is seen that there are three different ways in which the statutory requirements are enforced, namely: (i) by levying interest (ii) by imposing penalties if the default has been occasioned without reasonable cause and (iii) by punishing the assessee treating the assessee in default as an offence, if it is proved that it was caused by willful failure. These are the three varying degrees of defaults and the statute clearly keeps up the distinction between the three modes. In Hindustan Steel Ltd. v. State of Orissa [83 ITR 26), the Hon`ble Supreme Court observed that whether the penalty should be imposed for failure to perform a

statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all relevant circumstances and that even if a minimum penalty is prescribed the authority competent to impose the penalty will be justified in refusing to impose a penalty when there is a mere technical or venial breach of the provisions of the Act. Again in Mansukhlal & Bros v. CIT [73 ITR 546], the Hon`ble supreme court had observed that the penalty is not uniform and its imposition depends upon the exercise of discretion by the taxing authorities and is imposed as a part of the machinery for assessment of tax liability. The words may direct that such person shall pay by way of penalty in section 271(1) (c) leave a certain amount of discretion in imposition of penalty which need not be imposed when there is a minor breach of the law and when having regard do the facts ends of justice require that the assessee should not be penalized. So also where the circumstances of a case establish that the mistake is accidental and inadvertent and there is no material at all to justify any want of bona fide or any gross neglect, imposition of penalty is not justified.[Mahadeshwara Movies 144 ITR 127 (kar)]. Considering these facts, and the precedents applicable to these facts, we are of the view that penalty should not be imposed on the assessee. Accordingly, we delete the penalty of Rs.2,00,060/-.

11. In the result, appeal filed by the assessee is allowed.

Order is pronounced on 29/07/2021 by placing result on Notice Board.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Surat /दिनांक/ Date: 29/07/2021 /*sgr*

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

/ / TRUE COPY / /

Assistant Registrar/Sr. PS/PS
ITAT, Surat