

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"B" BENCH, MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 2604/MUM/2019 (A.Y: 2012-13)

Ms. Binna Nitin Parikh W1, Sudantta Apartments 10A Mount Pleasant Road Malabar Hill, Mumbai - 400006 PAN: AADPP1671P	v.	ACIT – Circle – 19(1) Room No. 203, 2 nd Floor Matru Mandir, Tardev Road Mumbai – 400 007
(Appellant)		(Respondent)

Assessee by	:	Shri Sunil Hirawat
Department by	:	Shri C.T. Mathews
Date of Hearing	:	08.09.2021
Date of Pronouncement	:	26.11.2021

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)–18, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 14.03.2019 for the A.Y. 2012-13.

2. Brief facts of the case are that, assessee is an individual having income from Salary, House Property, share of profit from partnership

firms, capital gain and other sources. The assessee filed its Return of Income for the A.Y. 2012-13 on 24.07.2012 declaring total income at Rs.2,43,54,526/- and the same was revised on 31.08.2012 declaring total income at Rs.1,40,36,035/-. The assessment of the assessee was completed u/s. 143(3) of the Act on 30.12.2014 assessing the total income at Rs.1,40,36,035/- as returned by the assessee. The case was reopened u/s. 147 of the Act based on the information received from DDIT(Inv.), Kolkata that Directorate of Kolkata has initiated survey action in the case of School of Human Genetics & Population Health (SHGPH). In the survey it was observed that assessee is one of the beneficiaries. Accordingly, during the re-assessment proceedings, it was held that donation made by the assessee is an accommodation entry and disallowed the deduction claimed by the assessee. Accordingly, penalty proceedings under section 271(1)(c) of the Act was initiated in respect of the said additions. During assessment proceedings assessee vide its reply letter dated 02.11.2016 by stating that though the assessee has in his possession all the documents regarding the above said donation, however, he decided to withdraw the claim of weighted_deduction to avoid litigation and to buy peace. After considering the submissions of the assessee, Assessing Officer levied the penalty u/s. 271(1)(c) of 100% of the tax sought to be

evaded which works out to ₹.3,05,375/-. Aggrieved assessee preferred an appeal before Ld.CIT(A), before the Ld.CIT(A) assessee submitted a detailed submission which is reproduced by the Ld.CIT(A) in his order.

However, for the sake of clarity it is reproduced below: -

"5. Submissions of the appellant: During the appellate proceedings, the Authorized Representative of the appellant submitted as under:

"2. During the course of assessment proceedings, the assessee submitted vide its letter dated 02.11.2016 (Annexure-A) as under:

"I am assessed to tax under PAN: AADPP1671P with your charge. I have filed my Income-tax Return relating to the Asstt. Year 2012-13 which was re-opened by the issue of notice u/s.148 dated 04.03.2016. The aforesaid case was re-opened u/s.147 of the IT. Act as the assessee has given donation of Rs.5,00,000/- to School of Women Genetics & Population Help in which the assessee is one of the beneficiary/ bogus donors. In this connection, I have submitted donation receipt and bank statement from which the aforesaid payment was made in your office through my C.As, M/s.Karnavat & Co. I have claimed deduction of Rs.8,75,000/- (175% of Rs.5,00,000/-) against my business income in respect of aforesaid donation of Rs.5,00,000/-.

I am filing my Income-tax Return regularly and paying all my due taxes. The aforesaid donation of Rs.5,00,000/- is genuine donation given by me. I have received the statement of some of the persons of School of Women Genetics & Population Help that donation of received by them are bogus donations. However, to avoid litigation and to buy peace of mind, I hereby offer to withdraw the claim of deduction of Rs.8,75,000/- u/s.35(1)(ii) of the IT. Act against the business income. I also pray not to initiate/levy penalty u/s.271(1)(c) as I have offered the aforesaid amount voluntarily to avoid litigation and to buy peace of mind with the Income tax Department.

Please find the above in order".

3. From the above, it can be seen that the assessee has voluntarily offered the additional income of Rs.8,75,000/- with the condition that no penalty proceedings u/s.271(1)(c) should be initiated on the said sum of Rs.8,75,000/-. However, in the impugned assessment order made u/s.143(3) r.w.s. 147 dated 28.11.2016, the

Assessing Officer has made the disallowance of Rs.8,75,000/- on which penalty proceedings u/s.271(1)(c) has been initiated.

4. *In the instant case, the penalty proceedings u/s.271(1)(c) has been initiated on the disallowance which has been voluntarily offered by the assessee as additional income to avoid litigation and to buy peace of mind and accordingly such addition of acceptance does not lead to the concealment of income, The assessee has also submitted detailed explanation vide its letter dated 23.02.2017. However, in the impugned order made u/s.271(1)(c) of the IT. Act, 1961, the Assessing Officer has ignored the contentions of the assessee and levied penalty of Rs.3,05,375/-.*

5. *From para-1 above, your honour may kindly seen that based on the Revised Return of Income, the assessee was entitled for the refund of Rs.21,99,999/-. A person who has paid such a huge amount of tax and entitled for the substantial refund will not indulge in any activities like giving bogus donation, etc. to reduce her taxable income. The assessee has given the donation to help the institution with the intention to help them in a noble cause. As such, it is submitted that the donation is not given to avoid tax as has been alleged by the learned Assessing Officer (LAO). As a matter of fact, the assessee was surprised to know that money given for a genuine cause has been plundered and not spent for the noble cause for which it was given.*

6. *The assessee has also submitted and requested the LAO vide letter dated 03.09.2016 (Annexure-B) the contents of which are as under:*

"1. The assessee has given donation of Rs.5,00,000/- to School of Human Genetics and Population Health. Copy of donation receipt alongwith the covering letter of the assessee is enclosed herewith. The aforesaid amount was transferred through banking channel NEFT. Copy of proof of NEFT is enclosed herewith. The aforesaid Trust is assessed to tax under PAN: AABAS4570M. The aforesaid Institution is notified u/s.35(1)(ii). Copy of the notification in this respect published in Weekly Gazette of India Jan 31 — Feb 6, 2010 is enclosed herewith.

2. *From the above, it may be noted that the assessee has made the aforesaid payment genuinely and not as beneficiary as given in the reason for re-opening the assessment. As such, the assessee has rightly claimed deduction in respect of aforesaid donation u/s.35(1)(ii) of the IT. Act.*

3. *Kindly give us the copies of the statement recorded based on which aforesaid proceedings was initiated for our further explanation.*

4. *Kindly provide us the opportunity for cross examination”.*

From the said letter, your honour may kindly see that the assessee has asked for the statement of the concerned persons as well as willingness to cross-examine the aforesaid person. However, the LAO has neither given the copies of statements nor given an opportunity to cross-examine the person who have given the statement.

7. *It is further stated that the legal effect of the statement recorded at the back of the assessee and without giving an opportunity of cross examination which the assessee has asked vide letter dated 03.09.2016 has no evidentiary value. Since School of Human Genetics was the LAO's witnesses and LAO has to call them and allow assessee to crossexamine them. This has not been done. Thus rule of principle of natural justice has been violated. The addition so made is illegal and the same is required to be deleted even on the ground of violation of principle of natural justice. Accordingly, even penalty u/s.271(1)(c) does not hold good.*

16. *In the impugned penalty order, the LAO has erred in stating that the assessee has failed to offer any explanation and accordingly, Explanation-1 in respect of Section 271(1)(c) is applicable to the facts of the case. Clause (A) of Explanation-1 applies where a person fails to offer an explanation or offered an explanation which is found by the Assessing Officer to be false. The assessee has filed an explanation which is clear from para-3 of letter dated 25.02.2017 wherein in reply to the penalty proceedings u/s.271(1)(c), the assessee submitted vide its letter dated 02.11.2016 as under:*

"3. (a) During the course of assessment proceedings, the assessee submitted vide its letter dated 02.11.2016 as under:

I am assessed to tax under PAN: AADPP1671P with your charge. I have filed my Income-tax Return relating to the Asstt. Year 2012-13 which was re-opened by the issue of notice u/s.148 dated 04.03.2016. The aforesaid case was re-opened u/s.147 of the LT. Act as the assessee has given donation of Rs.5,00,000/- to School of Women Genetics & Population Help in which the assessee is one of the beneficiary/ bogus donors. Ir. this connection, I have submitted donation receipt and bank statement from which the aforesaid payment was made in your office through my C.As, M/s.Karnavat & Co. I have claimed deduction of Rs.8,75,000/- (175% of Rs.5,00,000/-) against my business income in respect of aforesaid donation of Rs.5,00,000/-.

I am filing my Income-tax Return regularly and paying all my due taxes. The aforesaid donation of Rs.5,00,000/- is genuine donation given by me. I have received the statement of some of the persons of School of Women Genetics & Population Help that donation of received by them are bogus donations. However, to avoid litigation and to buy peace of mind, I hereby offer to withdraw the claim of deduction of Rs.8,75,000/- u/s.35(1)(ii) of the LT. Act against the business income. I also pray not to initiate/levy penalty u/s.271(1)(c) as I have offered the aforesaid amount voluntarily to avoid litigation and to buy peace of mind with the Incometax Department.

(b) Nowhere assessee's name is appearing in the statement recorded. However, to avoid litigation and to buy peace of mind, the assessee has voluntarily declared the additional income of Rs.8,75,000/-".

It is therefore submitted that the assessee has filed an explanation and it is not found to be false by the LAO. Clause (B) of Explanation-1 applies to a situation where the assessee is not able to substantiate or fails to prove the bonafides. Even clause (B) does not apply because the assessee has submitted the full details of the donation viz. letter, receipt, exemption certificate etc. vide letter dated 03.09.2016 (Annexure-B). It is, therefore, submitted that the Explanation-1 to Section 271(1)(c) does not apply to the case of the appellant.

17. In view of the above, it is submitted that as the assessee has disclosed all the facts and had not concealed the particulars of her income nor has furnished inaccurate particulars of such income, it is submitted that the penalty of Rs.3,05,375/- levied u/s.271(1)(c) of the Income-tax Act may kindly be dropped.

8. The assessee further submitted as under:

"The request was made before LAO not to levy penalty on the addition of Rs.8,75,000/- and it was made clear that it is to buy peace of mind and to avoid litigation with the Department. However, the LAO has accepted only a part of the aforesaid request (to accept the addition of Rs.8,75,000/-), but not accepted the 2nd part not to levy penalty on the aforesaid amount. In this connection, we draw your honour's kind attention towards the decision of the ITAT Mumbai Bench in the case of Bhagat and Co. vs. ACIT (2006) 6(101 TTJ Mum 553) whereby under the similar facts, the Assessing Officer has accepted the declaration but request not to levy penalty was not accepted by the Assessing Officer. The facts of the aforesaid case as stated in para-2 of the said judgment. In para-5 of the said judgment (Annexure-D), the Tribunal observed as under:

"5. The surrender made by the assessee is clearly a conditional surrender and the Department has chosen to accept part of the proposal favourable to it and deny the other part of the same proposal, which is not favourable to the Revenue, This position of the Revenue is unacceptable. This issue was decided in favour of the assessee in the case of *Harnam Singh Bishan Singh Jewellers (P) Ltd. v. Asstt. CIT (supra)*. The observation of the CIT(A) regarding the conditional surrender that there is nothing on record to suggest that such a request of the appellant was ever accepted by the AO or an understanding to that effect reached between the assessee and the AO, is not sustainable".

11. We draw your honour's kind attention towards the Bombay High Court's decision in the case of *CIT Poona vs. Bhimji Bhanjee & Co. (146 ITR 145) (Annexure-E)* which is as under:

"The submission of Mr. Sajnani, the learned counsel for the Revenue, is that the assessee had in fact admitted the concealment of income and hence it was not necessary for the Revenue to prove the same. It was submitted by him that in view of this the burden was on the assessee to show that there was no concealment and the conclusion arrived at by the Tribunal was erroneous. He placed strong reliance on the decision of a Division Bench of this court in *Western Automobiles India v. CIT [1978] 112 ITR 1048*. In our view, it is not possible to accept the submission of Mr. Sajnani. The facts, which we have narrated earlier, clearly show that the assessee nowhere admitted that it had concealed any income. All that the assessee did was to admit that there were certain cash credits in its books of account in favour of named parties and that the assessee was unable to produce evidence to show that these cash credits were genuine, as the assessee was not in a position to call the parties in whose favour the cash credit appear, the reason given by the assessee being that it was always heavily indebted and unable to trouble its creditors to give evidence. The aforesaid stand by the assessee can, in our view, never be considered as an admission by the assessee that it has concealed any income. As far as the decision in *Western Automobiles (India) [1978] 112 ITR 1048 (Bom)* is concerned, the facts of that case are altogether different from the facts of the case before us. In that case, when the ITO discovered in the account books of the assessee loans to the tune of Rs. 90,000, he came to the prima facie conclusion that these represented concealed income. The assessee-firm agreed to the addition of the aforesaid amount of Rs. 90,000 as its business income for that year and the addition was made by the ITO as the assessee's concealed income from business and not as income from undisclosed sources. In the present case, the assessee has nowhere admitted that it has concealed its income and even the ITO has not added the said amount of Rs. 10.590 as

concealed income from business but as from undisclosed sources. In view of this, the said decision in the case of Western Automobiles (India) [1978] 112 ITR 1048 (Bom) is clearly inapplicable to the present case.

In the result, the question referred to us in answered in the negative and in favour of the assessee. The Commissioner to pay the costs”.

12. Under the similar circumstances, where the conditional surrender was made, the ITAT Amritsar Bench in the case of Manjit Singh Baldev Singh (69 ITD 197) (Annexure-F) has deleted the penalty u/s.271(1)(c). In this connection, we would like to draw your honour’s kind-attention towards the observation of the ITAT in para-10 & 11 which are reproduced below for the kind reference of your honour.

”10. In the case of the assessee even in the surrender letter he has clearly mentioned that the surrender is subject to no concealment. This clearly shows that the assessee is not admitting that the income its concealed. It was, therefore, duty of the Assessing Officer to establish concealment during the penalty proceedings, at least should have allowed the assessee to produce the cash creditors which was denied to him depending upon the same surrender agreement in which assessee has categorically pleaded that the surrender is subject to no concealment. This type of situation has been dealt by the Hon’ble Supreme Court in the case of Sir Shadilal Sugar & General Mills Ltd. v. CIT [1987] 168 ITR 705/33 Taxman 460A”

14. In the impugned penalty order, the LAO has relied on the decision of the Hon’ble Supreme Court in the case of Mak Data Ltd. The decision of the Hon’ble Supreme Court is distinguishable on the facts that in the case of Mak Data Ltd., no explanation was given by the assessee in respect of the documents found on the survey proceedings. In the case of the assessee, the assessee has given the explanation that it has given the donation and the Assessing Officer was not able to contradict this fact and he has simply relied on some observations of the Investigation Wing of Kolkata. Nowhere in the said finding of the Investigation Wing of Kolkata, the name of the assessee appears. It is, therefore, submitted that the explanation given by the assessee is bonafide and the Assessing Officer did not find the explanation being false or untrue.

15. The decision of the Deloitte Consulting India Put. Ltd. relied by the LAO is not relevant in the instant case as in the said case, penalty has been levied in respect of the determination of Arm’s Length Price under the Transfer Pricing provisions”.

3. After considering submissions of the assessee, Ld.CIT(A) sustained the penalty with the following observation: -

"6. Decision: I have carefully considered the penalty order and the submissions of the appellant. This ground pertains to levy of penalty u/s 271(1)(c) of the IT Act, 1961 on the ground of disallowance of bogus donation. After taking into consideration totality of facts, circumstances and relevant law, the appeal is disposed of as under:

6.1 The Authorized Representative of the assessee was asked during the assessment proceedings to explain as to why the claim made by the assessee u/s 35(1)(ii) should not be disallowed in view of findings of the investigation wing. He was also given copies of the statement of the persons recorded by the investigation wing. In response, the representative of the assessee explained that to avoid litigation and to buy peace of mind the assessee vide letter dated 02/11/2016 withdrawing the claim of donation u/s 35(1)(ii) and offered income of Rs.8,75,000/- for taxation. The Assessing Officer concluded, from the reply of the assessee, it evident that the assessee has not offered any explanation against the findings of the investigation wing, Kolkata and the assessee has offered for tax a sum of Rs.8,75,000/- by withdrawing the claim of deduction, u/s. 35(1)(ii) of I.T. Act only when confronted with the facts of the case. The Assessing Officer thus disallowed Rs.8,75,000/- and added to the total income of the assessee.

6.2 It is pertinent to note that the Assessee has not filed any appeal against the assessment order. Therefore, the quantum proceedings have reached finality.

6.3 During the penalty proceedings also, the appellant could not furnish explanation to the satisfaction of the Assessing Officer. The assessee emphasized that addition was accepted by the it on reasons that they wanted to avoid litigation and buy peace of mind that itself cannot be construed a furnishing of inaccurate particulars of income or concealment of income. Therefore, the Assessing Officer has levied penalty u/s.271(1)(c).

6.4 During the appeal proceedings, the Ld. Authorized Representative requested that the penalty be deleted.

6.5 It is worthwhile to note that the fact of bogus donation claimed by the appellant has reached finality as the appellant has accepted the assessment order and no appeal was filed by the

appellant. During the appellate proceedings also, the appellant could not furnish reply to the satisfaction to the AO.

6.6 Penalty u/s. 271(1)(c) can be levied if the assessee furnishes inaccurate particulars of income or conceals the particulars of income. In the instant case, the appellant by claiming bogus donation has furnished inaccurate particulars of income. Further, as a result of false claim of bogus donation, the income was suppressed. This has resulted in concealment of particulars of income. The assessee withdrew the claim of donation u/s 35(1)(ii) and offered Rs.8,75,000/- for taxation only after the initiation of assessment proceedings and issue of notice u/s 143(2) of the IT Act, 1961 which cannot be accepted as voluntarily. The assessee had not offered this bogus donation for taxation while filing original return of income or even while filing revised return of income.

6.7 Case laws cited by the appellant during the appellate proceedings is distinguishable in the present case to the extent that the appellant withdrew the claim of donation u/s 35(1)(ii) only after the initiation of assessment proceedings and issue of notice u/s 143(2) of the IT Act, 1961, when confronted by the Assessing Officer.

6.8 As discussed supra, present case is a clear case of furnishing of inaccurate particulars of income as well as concealment of particulars of income. Therefore, it is a fit case for levy of penalty u/s.271(1)(c) of the Act."

4. Aggrieved assessee preferred an appeal before us, raising following grounds in the appeal: -

"1. On facts and in law, the learned CIT(A) had erred in confirming the penalty levied u/s.271(1)(c) without appreciating that the appellant has neither concealed the income nor furnished inaccurate particulars of income. Under the facts and circumstances of the matter, no penalty is leviable u/s.271(1)(c) of the Act.

2. On facts and in law, the learned CIT(A) had erred in not deleting the penalty of Rs.3,05,375/- levied by the Assessing Officer u/s.271(1)(c) of the I.T. Act, 1961. Under the facts and circumstances of the matter, he ought to have deleted the penalty of Rs.3,05,375/- levied by the Assessing Officer U/s.271(1)(c) of the Act.

3. *The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing of the appeal, so as to enable the Hon. ITAT to decide this appeal according to law."*

5. At the time of hearing, Ld.AR submitted that assessee has made a donation to School of Human Genetics & Population Health (SHGPH) and subsequently the assessee has surrendered the claim during the reassessment proceedings and he brought to our notice Page No. 5 of the Paper Book to submit that assessee has voluntarily surrendered the above donation in order to buy peace and avoid litigation. Assessee also prayed not to initiate any penalty proceedings before the Assessing Officer. He also brought to our notice Page No. 11 of the Paper Book wherein the submissions made by the assessee during the penalty proceedings before the Assessing Officer. Further by relying on the decision of the Coordinate Bench in the case of Sandeep Bhimrao Lad *v.* DCIT (ITA.No. 1620/Mum/2018 dated 31.10.2019 Ld.AR prayed to delete the penalty levied by the Assessing Officer.

6. On the other hand, Ld. DR relied on the orders of the lower authorities.

7. Considered the rival submissions and material placed on record, we observed from the record that assessee has made donation to School of Human Genetics & Population Health (SHGPH) of ₹.5,00,000/- and during the assessment proceedings when the matter was brought to the notice of the assessee that the donation is bogus donation and the benefit claimed by the assessee is not allowable. The assessee in order to buy peace and avoid litigation, he surrendered the bogus donation. We observe from the record that in the similar situation the Coordinate Bench has deleted the penalty and it held as below: -

"13. With regard to other assessment years, we notice that assessing officer has made the addition without establishing or without making any investigation on bogus purchases. He made the addition merely because it is not established by assessee and observed that as the onus on assessee to prove the genuineness of the purchases. It may be acceptable to make addition in the return of income but when it comes to penalty, he has to establish that the purchases were made in order to conceal the income. Further we notice that assessee has accepted the addition in order to buy peace. We observe that the AO has not established that the above purchases are not genuine, the addition was made merely because assessee accepted the same as so. In the similar circumstances, the coordinate bench held as below:

4. We have considered rival contentions, carefully gone through the orders of the authorities below and also deliberated on the judicial pronouncements referred by the lower authorities in their respective orders as well as cited by Id. DR & AR during the course of hearing before us. From the record we found that at the very first instance share application money was surrendered by assessee with a request not to initiate any penalty proceedings. The AO passed order u/s.143(3) adding surrendered amount u/s.69A

on the plea that assessee has surrendered amount only after issue of notice. It is not disputed by the department that sum which was added u/s.69A was one which was surrendered by the assessee itself. Neither there was any detection nor there was any information in the possession of the department except for the amount surrendered by the assessee and in these circumstances it cannot be said that there was any concealment. In case of CIT vs. Suresh Chandra Mittal 251 ITR 9 (SC), Hon'ble Supreme Court observed that if the assessee has offered the additional income to buy peace of mind and to avoid litigation penalty u/s.271(1)(c) of the Act cannot be levied. In the instant case, there was no malafide intention on the part of the assessee and the AO had not brought any evidence on record to prove that there was concealment of income. At the time of surrender itself contention of not initiating any proceedings was there. No additional matter was discovered to prove that there was concealment of income. The AO has included the amount of share capital in the total income of assessee merely on the basis of assessee's declaration/surrender. The AO did not point out or refer any evidence or material to show that the amount of share capital received by the assessee was bogus. It is also not the case of the revenue that material was found at the assessee's premises to indicate that share application money received was an arranged affair to accommodate assessee's unaccounted money. Thus there was no detection by the AO that share capital was not genuine. The surrender of share capital after issue of the notice u/s.143(2) could not lead to any inference that it was not voluntary. Admittedly the assessee has offered the amount of share capital for taxation voluntarily and it was not the case of revenue that the same was done after its detection by the department. It is quite clear from the record that this entire transaction was not detection of the AO that the share capital was not genuine and that the assessee had offered the amount without any specific query. Even surrender of amount by the assessee after receipt of questionnaire could not be lead to any inference that it was not voluntary, in the absence of any material on record to suggest that it was bogus or untrue. The contention that in every case where surrender is made inference of concealment of income must be drawn under

S.58 of Evidence Act, cannot be accepted in view of the decision of Punjab & Haryana High Court in the case of Careers Education & Infotech (P) Ltd., (2011) 336 ITR 257 (P&H). Not an iota of evidence was narrated to support the addition made except the surrender made by the assessee itself. When no concealment was ever detected by the AO, no penalty was impossible. Recently, Hon'ble Punjab & Haryana High Court in the case of Siddharth Enterprises vide order dt. 14th July, 2009 held after considering the decision of Hon'ble Supreme Court in the case of Union of India & Ors. vs. Dharamendra Textile Processors & Ors. (2008) 306 ITR (SC) 277 that the judgment of Hon'ble Supreme Court in the case of Dharmendra Textiles (supra) cannot be read as laying down that in every case where particulars of income are inaccurate, penalty must follow. What has been laid down is that qualitative difference between criminal liability under s. 276C and penalty under s. 271(1)(c) had to be kept in mind and approach adopted to the trial of a criminal case need not be adopted while considering the levy of penalty. Even so, concept of penalty has not undergone change by virtue of the said judgment. It was categorically observed that penalty should be imposed only when there is some element of deliberate default and not a mere mistake. This being the position, the furnishing of inaccurate particulars was simply a mistake and not a deliberate attempt to evade tax. Hon'ble Supreme Court in the case of CIT vs. Suresh Chandra Mittal 251 ITR 9 (SC) observed that where assessee has surrendered the income after persistence queries by the AO and where revised return has been regularized by the Revenue, explanation of the assessee that he has declared additional income to buy peach of mind and to come out of waxed litigation could be treated as bona fide, accordingly levy of penalty under s. 271(1)(c) was held to be not justified.

14. *Respectfully following the same and also relying on case law of Suresh Chandra Mittal (supra) and with regard to case law relied by Ld. DR, the facts are distinguishable to the facts of the present case, hence not considered. Therefore, we are deleting the penalty charged."*

8. Since the issue involved in this appeal is also similar and assessee has surrendered the bogus donation in order to buy peace and respectfully following the above said decision we dismiss the penalty levied by the Assessing Officer.

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

Order pronounced on 26.11.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai / Dated 26.11.2021
Girdhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum