

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T. A. No. 724/Asr/2019**  
Assessment Year: 2016-17

Late Sh. Krishan Gopal  
Marwaha, through legal  
heir Deepak Marwaha  
Prop. M/s Deepak Handloom  
Emporium, Kotwali Bazar,  
Hoshiarpur

[PAN: AARPM 2962J]

**(Appellant)**

**V.** Dy. Commissioner of Income  
Tax, Circle, Hoshiarpur

**(Respondent)**

Appellant by : Sh. Surinder Mahajan, CA

Respondent by : Sh. Ravinder Mittal, Sr. DR

Date of Hearing : 23.02.2023

Date of Pronouncement : 02.03.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

The present appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-1, Jalandhar dated 21.10.2019, challenging the penalty levied u/s 271(1)(c) in respect of Assessment Year 2016-17

2. At the outset, the Id. counsel for the assessee submitted that the Assessing Officer has levied penalty u/s 271(1)(c) of the Act by observing that had the department not conducted the survey u/s 133A of the Income Tax Act, the assessee would not have made disclosure of the surrendered income to the tune of Rs.31 lacs during the course of survey u/s 133A of the Act. However, the AO has accepted the return income as assessed income in the course of assessment proceedings. The Id. CIT(A) has confirmed the penalty imposed u/s 271(1)(c) of the Act by observing that the assessee has failed to explain and substantiate the source of additional income which was offered only due to conduct of survey by the Income Tax Department which is covered by Explanation (1) to section 271(1)(c) of the Act, without appreciating the fact that return income has been accepted as assessed income by the AO.

The Id. counsel further submitted that the assessee has surrendered an additional income which was offered to tax during the survey operation on 23.02.2016 with the caveat that no penal action (APB pg. 5). The counsel has relied on the judgment of Hon'ble Punjab & Haryana High Court in the case of CIT v. Smt. Sudershan Gupta through L/H 10 DTR 0184 (CL PB pg. 38 to 41), wherein it has been held that Revenue having

not accepted the terms of surrendered in toto. Tribunal was justified in deleting the addition made on the basis of surrender.

3. Heard, the rival contention perused the material on record and case cited before us. It is admitted fact that the assessee has made a surrender of income to the tune of Rs.31 lacs subject to no penal action and it is also admitted fact that during the course of assessment proceedings, the AO has accepted the return income as assessed income.

4. On identical facts, the Pune Bench of ITAT in the case of ACIT v. East West Developers in ITA No. 1645/PUN/2018 vide order dated 16.08.2022 had deleted penalty levied u/s 271(1)(c) vide para 5 which is reproduced as under:

*"5. The judgment of the Hon'ble Supreme Court in MAK Data Pvt. Ltd. vs. CIT (2013) 358 ITR 593 (SC) does not come to the rescue of the Revenue. The assessee in that case filed his return on 27-10-2004 declaring income of Rs.16.17 lakh. Prior to that, a survey action was taken against the assessee on 16-12-2003. No income was offered during the course of survey and as such nothing was included in the return filed after the date of survey on that count. It was during the course of assessment proceedings and in reply to show cause notice filed on 22-11-2006 that the assessee made an offer of surrendering a sum of Rs.40.74 lakh. The AO accordingly completed the assessment by making this addition and thereafter imposed penalty. It was in that backdrop of the facts that the Hon'ble Supreme Court held that the penalty u/s. 271(1)(c) was rightly imposed because the disclosure of the assessee was immaterial. The Hon'ble Supreme Court observed that "Explanation to section 271(1) raises a presumption of concealment, when difference is noted by the AO, between reported and assessed income". It was in this factual scenario where the income*

*reported by the assessee in the return of income was lower than the income finally assessed by the AO, that the Hon'ble Supreme Court held that the penalty was rightly leviable."*

5. In the present case, since the AO has not noticed any difference between in the return income and the assessed income, the citations relied upon by the department are not applicable to the facts of the instant case as income under consideration forming the foundation of the penalty has not the one which was added by the AO beyond the income returned. In our view, that the assessee has voluntarily declared the income in the survey, and the return of income was accepted in the assessment without making any addition on that score. We hold that such income cannot constitute the basis for the imposition of penalty u/s 271(1)(c) of the Act. We, therefore, held that the impugned order passed by the Id. CIT(A) is perverse to the facts on the record and bad in law.

6. Accordingly, the impugned order of the Id. CIT(A) is set aside and the penalty levied u/s 271(1)(c) is deleted.

7. In the result, appeal of the assessee is allowed.

*Order pronounced in the open court on 02.03.2023*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

*\*GP/Sr./P.S.\**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order