

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.219/Jodh/2019  
(ASSESSMENT YEAR- 2008-09)**

Shri Shailendra Jhanwar, J-16, M/s. MGB & Co. LLP, Lal Kothi Yojana, Sahakar Marg, Jaipur		ITO, Ward-3, Chittorgarh
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN No.ABPPJ8770L</b>		

<b>Assessee By</b>	Shri Sandeep Jhanwar, CA
<b>Revenue By</b>	Shri S.M.Joshi, JCIT-DR
<b>Date of hearing</b>	21/03/2023
<b>Date of Pronouncement</b>	22/03/2023

**ORDER**

**PER KUL BHARAT, J.M.:**

The present appeal filed by the assessee for the assessment year 2008-09 is directed against the order of Ld. CIT(A)-1, Udaipur dated 26.02.2019. The assessee has raised following grounds of appeal:-

1. *“Under the facts and circumstances of the case, the Ld.CIT(Appeals)-1, Udaipur has erred in not allowing the relief in respect of penalty of Rs.1,83,260/- u/s 271(1)(c) despite the fact that additions were made on estimation basis.*

*2. The assessee craves right to add, alter or amend any of the grounds of appeal.”*

2. Facts giving rise to the present appeal are that in this case, assessment was framed u/s 143(3) of the Income Tax Act, 1961 (“the Act”) determining the total income at INR 34,81,720/-. The Assessing Officer (“AO”) also initiated penalty proceedings u/s 271(1)(c) of the Act. In quantum appeal, Ld.CIT(A) further reduced the addition at INR 21,60,817/-. Thereafter, the AO imposed penalty of INR 8,31,893/- u/s 271(1)(c) of the Act vide order dated 22.03.2013.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee by directing the AO to re-compute the penalty in respect of income of INR 7,63,083/-.

4. Aggrieved against the part sustenance of the penalty, the assessee is in appeal before this Tribunal.

5. At the outset, Ld. Counsel for the assessee submitted that penalty order did not specify the charge. Further, the penalty was imposed purely on the basis of estimation of income. He submitted that under the facts and circumstances of the present case, the authorities below should not have imposed the penalty. He placed

reliance on the decision of Co-ordinate Bench of the Tribunal in the case of *ITO vs Shri Uday Kumar D.Bhatt in ITA No.2072/Ahd./2018 & C.O.No.75/Ahd./2018* for AY 2014-15 order dated 06.08.2021.

6. On the other hand, Ld. JCIT DR opposed these submissions and supported the orders of Assessing authority.

7. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. It is seen from the records that the additions were made on the basis of estimation and part relief was granted by the Appellate Authority. Under the facts and circumstances of the present case, we are of the considered view that the AO ought not to have imposed penalty. We therefore, considering the binding precedent as relied by the Ld. Counsel for the assessee, direct the AO to delete the penalty imposed u/s 271(1)(c) of the Act to the assessee. Grounds raised by the assessee are hence, allowed.

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

Order pronounced in the open Court on 22/03/2023

**Sd/-**  
**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\*Amit Kumar\**

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar  
Jodhpur Bench