

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT “SMC” BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

**आ.अ.सं./ITA No.205/SRT/2023** (AY 2016-17)

(Hearing in Physical Court)

Vithalbhai Kadvabhai Korat 55,V.T. Nagar, Near Sarthana Jakatnaka, Varachha, Surat-395006 <b>PAN No: ADKPK 2173 K</b>	Vs	Income Tax Officer, Ward- 3(3)(1), Surat, Aaykar Bhavan, Majura Gate, Surat-395001
<b>अपीलार्थी/</b> Appellant		<b>प्रत्यर्थी /</b> Respondent

निर्धारिती की ओर से /Assessee by	Shri Mehul Shah, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Date of filing appeal	24.03.2023
सुनवाई की तारीख/Date of hearing	31.05.2023
उद्घोषणा की तारीख/Date of pronouncement	31 .05.2023

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “NFAC/Ld. CIT(A)”] dated 17.02.2023 for assessment year 2016-17, which in turn arises out against the penalty levied by Assessing Officer/ Income Tax Officer, Ward-3(3)(5) Surat, under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 24.06.2019. The assessee has raised the following grounds of appeal:-

*“1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in levying penalty of Rs.1,51,020/-u/s 271(1)(c) of the I.T. Act 1961.*

*2. It is therefore prayed that penalty levied by the Assessing Officer and confirmed by CIT(A) may please be deleted.*

*3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

2. Brief facts of the case are that assessee is an individual and earned income from share of profit from his partnership firm and also engaged in agricultural activities. The assessee filed his return of income for assessment year 2016-17 declaring income at Rs.14,70,290/- and shown agricultural income at Rs.16,30,530/-. The case was selected for scrutiny. The Assessing Officer during the assessment noted that assessee was showing agricultural income for so many years and during the year under consideration, the assessee has shown cultivated area of 70 Bighas (Approx.) of land. There is no change in the area of land with previous year. In the earlier year, the assessee shown average income per Bighas at Rs.14,637/- and in this year, has shown income of Rs.23,247/- per bigha. The Assessing Officer was of the view that agricultural income shown during this year is on higher side and Assessing Officer on the basis of two year's average agricultural income worked out the average agricultural income per bigha at Rs.18,942/- and made addition of Rs.1,57,600/-. The Assessing Officer further noted that

assessee has utilized interest bearing fund for investment of non-business asset like purchase of immovable property. The assessee has paid interest of Rs.3,31,118/- which was obtained through interest bearing fund and used for non-business purposes. The Assessing Officer made addition by taking view that assessee offered the said amount of Rs.3,31,118/- for taxation. The assessing officer initiated penalty on both the additions.

3. The Assessing Officer before passing the penalty order issued show cause notice to assessee and in response to show cause notice, assessee filed his reply dated 05.03.2019. In the reply, assessee submitted that he has furnished complete details of agricultural income and expenses and assessee voluntarily agreed and offered Rs.1,57,600/- to buy peace. Similarly, for the addition on account of interest bearing fund, the assessee stated that he voluntarily offered such income and no penalty is leviable. The explanation furnished by the assessee was not accepted by Assessing Officer and he levied the penalty @ 100% sought to be evaded, on both the additions. The Assessing Officer levied the penalty of Rs.1,51,020/-.

4. On further appeal before Ld. CIT(A). The appeal of assessee migrated before NFAC/Ld. CIT(A) where the NFAC/Ld CIT(A) upheld the action of Assessing Officer. The NFAC/Ld. CIT(A) while confirming the action of Assessing Officer held that NFAC/Ld. CIT(A) convinced with the scrutiny proceeding the addition in question would never have come to light, if the case was not selected for scrutiny. Further, aggrieved assessee has filed present appeal before the Tribunal.

5. I have heard the submission of Ld. Authorized Representative (Ld. AR) for the assessee and learned Senior Departmental Representative (ld. Sr DR) for the Revenue. The Ld. AR for the assessee submits that Assessing Officer levied penalty on the addition on account of agricultural income, which was made on estimated basis by taking average of two years' agricultural income and on addition of interest expenses, the assessee offered himself, during the assessment. Therefore, there was no occasion for Assessing Officer to levy such penalty. To support his submission, Ld. AR for the assessee relied upon the following case law:

- Price Waterhouse Coopers Pvt. Ltd. vs. CIT [2012] 77 DTR 0153 (2012) 253CTR 0001, (2012) 348 ITR 0306, (2012) 211 Taxman 0040 (SC)

- Narindera Industries Vs. ACIT (2015) 44 CCH 0846 (Chd-Trib) (2016) 176 TTJ 0035 (Chd)
- DCIT vs. Nepa Ltd. (2014) 41 CCH 0531 (Indore-Trib) (2014) 112 DTR 0212 (Ind) (2015) 167 TTJ 0124 (Ind)
- CIT vs. Reliance Petroproducts (P.) Ltd. (2010) 36 DTR 0449, (2010) 230 CTR 0320, (2010) 322ITR 0158, (2010) 189 Taxman 0322 (SC)
- Shailesh Jayendra Bhadalia vs. ITO-33(3)(4),Mumbai ITA No.7224/Mum/2018 dated 07.02.2020
- Sir Shadi Lal Sugar & General Mills Ltd. Vs. CIT [1987] 33 Taxman 460A (SC)/[1987] 168 ITR 705 (SC)/[1987] 64 CTR 199 (SC)[31-07-1987]

6. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities. The ld SR DR for the revenue submits that the ld CIT(A) has considered all such submissions of the assessee and confirmed the penalty.

7. I have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. I have also deliberated on the case law cited by Ld. AR for the assessee. I find that Assessing Officer during the assessment, made addition on account of agricultural income on the basis of average income of two years and added Rs.1,57,600/-. Admittedly such addition is based on estimation of two years' average income and on such estimation, no penalty is leviable. As it is settled law that on estimation addition no penalty is leviable.

8. So far as other addition of Rs.3,31,118/- is concerned, I find that assessee has voluntarily offered such interest expenditure during the assessment. Thus, the assessee is not to be penalized on such addition as he himself has offered before assessment proceedings. Considering the peculiar facts of the case, I direct the Assessing Officer to delete the entire penalty levied under section 271(1)(c) of the Act. I order accordingly. In the result, the grounds of appeal raised by the assessee are allowed.
9. In the result, the appeal of assessee is allowed.

Order pronounced on 31<sup>st</sup> May, 2023 in the open court.

**Sd/-**  
**(PAWAN SINGH)**  
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत/Surat, Dated: 31/05/2023

*Dkp. Out Sourcing Sr.P.S*

Copy to:

1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

// True Copy //

By order

Senior Private Secretary/ Private  
Secretary/Assistant Registrar, ITAT, Surat