

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, AHMEDABAD**

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**  
**AND**  
**SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.45/Ahd/2023**  
**Assessment Year :2015-16**

Radhe Developers (India) Ltd. 1 <sup>st</sup> Floor, Chunibhai Chamber B/h. City Gold Cinema Ashram Road Ahmedabad 380 009. PAN : AAACR 9177 L	Vs	ACIT, Cir.3(1)(2) Ahmedabad.
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<b>(Applicant)</b>		<b>(Responent)</b>
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Assesseeby :	Shri Biren Shah, AR
Revenue by :	Ms.Saumya Pandey Jain, Sr.DR

सुनवाई की तारीख/Date of Hearing : 31/10/2023  
घोषणा की तारीख /Date of Pronouncement: 19/01/2024

**आदेश/O R D E R**

**PERANNAPURNA GUPTA, ACCOUNTANT MEMBER**

The present appeal has been filed by the assessee against order passed by the Ld.Commissioner of Income Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi(hereinafter referred to as "Id.CIT(A) dated 15.12.2022 under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) confirming the levy of penalty imposed by the AO under section 271(1)(c) of the Act pertaining to Assessment Year 2015-16.

2. The grounds raised by the assessee are as under:

- i) *In the facts and in the circumstances ui me case, the Ld. CIT (A) has erred in rejecting the appellant's plea that the penalty order u/s. 271(1)(c) passed by the Assessing Officer was bad in law.*
- ii) *The Ld. CIT (A) has failed to appreciate that the Assessing Officer has to give a clear finding as to whether the case is that of concealment of income or that of furnishing inaccurate particulars of income. In the absence of such specific finding, the penalty order was bad in law.*
- iii) *In the facts and in the circumstances of the appellant's case, the Ld. CIT (A) has erred in upholding the levy of penalty of Rs. 10,69,141/-.*

2.1 *The Ld. CIT (A) ought to have appreciated that*

- i) *The appellant had provided all the necessary facts and working of closing stock of work-in-progress before the Assessing Officer and the Assessing Officer had taken a different working*
- ii) *The increase in the value of closing stock would result into increase in value of opening stock of next year and thus, it tax neutral addition, particularly when the appellant is being assessed at maximum marginal rate.*
- iii) *The appellant's contentions for increase of the value of the opening stock in the next year are accepted by the CIT (A) in quantum appeal.*
- iv) *Thus, the appellant had given a bonafide explanation and the said explanation has not been found to be false*
- v) *Thus, having regard to the various decisions, the levy of penalty was not justified in the facts of the appellant's case.*

2.2 *Having regard to the facts and circumstances of the appellant's case, the Hon'ble ITAT may please direct for deleting the penalty u/s.271(1)(c) levied in the present case.*

*The appellant craves leave to add to amend or to raise any further grounds of appeal as case may arise.*

3. Before us arguments were made solely with respect to the merits of the case, and the appeal, accordingly, is disposed of after hearing both the parties.

4. We have gone through orders of the Assessing Officer (AO) and the Id.CIT(A) both in the quantum proceedings, wherein additions were made to the income of the assessee, and in the penalty proceedings, wherein penalty u/s 271(1)(c) of the Act was levied for concealing/furnishing inaccurate particulars of income with respect

to the additions so made and confirmed in the quantum proceedings. We have also heard contentions of both the parties before us.

5. As transpires from the orders of the Revenue authorities in penalty proceedings, the impugned penalty was levied by the AO on account of addition made to the income of the assessee for short valuation of closing stock to the tune of Rs.24,53,100/-.

We hold the penalty so levied not sustainable in law for various reasons, which are being dealt with by us, hereinafter.

6. The most glaring aspect, which comes out from a bare perusal of the assessment and appellate orders is of the fact that the penalty has been levied without any application of mind and confirmed by the Id.CIT(A) also without any application of mind. This is evident from the fact that while the AO began his penalty order noting the fact that the addition in the quantum proceedings was made to the income of the assessee on two counts –

i)	Addition of closing WIP	Rs.24,53,100/-
ii)	Addition under section 36(1)(iii)	<u>Rs.10,06,905/-</u>
		Rs. 34,60,005/-

7. And further notes the fact that the Id.CIT(A) confirmed the addition only on account of addition of closing stock. He thereafter goes on to levy penalty on account of addition confirmed by the Id.CIT(A), but in the calculation of the penalty levied, which forms part of the order of the AO, the AO levies penalty on other addition made under section 36(1)(iii) of the Act also, which addition as per his own admission, was deleted by the Id.CIT(A). This fact emanates from para-1 to 4 of the penalty order passed under section 271(1)(c)

of the Act, wherein at para-4, the AO clearly mentions that he has reasons to believe that the assessee has furnished inaccurate particulars of income pertaining to the valuation of closing stock amounting to Rs.24,53,100/-. The same is reproduced hereunder:

*“4. As brought out in the assessment order, the assessee has not worked out valuation of closing stock accordingly, addition of Rs.24,53,100/- was made on this ground to the total income of the assessee. The CIT(A) confirmed the addition of Rs. 24,53,1000/- I have therefore reason to believe that the assessee has furnished inaccurate particulars of income and thereby concealed the particulars of Its Income. Therefore, it clearly emerges that the particulars filed in the Return of Income by the Assessee is found to be inaccurate, erroneous or false and which has an impact on total income returned by the assessee and therefore, it attracts liability for penalty u/s.271(1)(c) for concealment of particulars of income. Here, it is pertinent to discuss the legal position on the issue:*

8. However, at para-5.3 of the same order, wherein he levied penalty at the rate of 100% of the tax sought to be evaded, he calculated concealed income at Rs.34,60,005/- which includes the addition made under section 36(1)iii) of the Act, which stood deleted by the ld.CIT(A). Para 5.3 is reproduced hereunder:

5.3 In view of the above facts and legal position discussed in the preceding paras, the assessee is held to have furnished inaccurate particulars of income and thereby concealed the particulars of income, therefore, the liability of penalty arises. The assessee preferred appeal against the addition made which has been confirmed by the CIT(A) and the then AO in its Order giving effect to the CIT(A)'s order. Therefore, there was no need for any further evidences that the income for which the additions made, was not offered for taxation for A.Y. 2015-16 in the original / revised return of income. The A.O. has made the addition accordingly, as brought out in the assessment order and penalty proceedings initiated for furnishing inaccurate particulars of its income and thereby concealing the particulars of income, are, therefore, within meaning of provisions of section 271(1)(c) of I. T. Act, 1961.

Sr. No.	Items	Amount
1	Assessed Income	(#RS 50,66,286)
2	Income other than concealed Income	(-)Rs 85,26,291
3	Concealed Income (Sr. No. 1-2)	Rs 34,60,005
4	Tax on Assessed Income	RS, 15,65,,483
5	Tax on other than concealed Income	Rs 26,34,624
6	Tax evaded on Concealed Income (Sr. No. 4-5)	RS. 10,69,141
7	Minimum Penalty leviable @100% of the tax at Sr.No.6 above	RS. 10,69,141

9. This clearly shows the total non-application of mind by the AO while levying the penalty. This fact of addition made by the AO in

quantum proceedings and confirmed by the Id.CIT(A) has been corroborated by the orders of the AO and the Id.CIT(A) in quantum proceedings, which were placed before us.

The Id.CIT(A) while confirming the penalty levied by the AO, also seems to have not applied his mind to the issue. While he also notes that in appeal in quantum proceedings only the addition of valuation of closing stock at Rs.24,53,100/-was sustained, at para 5.1 of his order, butwhile confirming the penalty levied ,at para 5.6 of his order, he notes inaccurate particulars of income furnished by the assessee to be amounting to Rs.34,60,005/- .Para 5.1 and 5.6 of the CIT(A)'s order are reproduced hereunder:

**5.1** The Ld. CIT (A)-9 Ahmadabad at para 6.2 of his order dated 30.11.2018 for AY 2015-16 has recorded as under while upholding addition of Rs.24,53,100/-:

*"6.2 I have carefully considered the rival contentions, case law relied upon as well as the observations made by the AO. From perusal of the details, it is noticed that the appellant has developed 4 schemes during the relevant period, however, sales had taken place only in one scheme i.e. 'Radhe Serene'. It is also observed by the AO that the appellant is following sale deed execution method for recognition of review in the said scheme. Total saleable area available was 32664 sq. yds as against which only 2915 sq. yds was sold till the end of the financial year in this particular scheme. Based on the details provided by the appellant, the AO has re-calculated closing work-in-progress for this scheme which comes to Rs.2,59,79,970/- as against this amount, the appellant had shown closing stock of Rs.2,35,26,870/-. As the method followed by the AO is correct, **the addition made of Rs.24,53,100/- is upheld.** However, since it is closing stock, the AO is directed to allow the claim of this closing stock as opening stock of work-in-progress in the subsequent assessment year. Accordingly, this ground of **appeal is partly allowed.**"*

The addition of Rs.24,53,100/- upheld by Ld. CIT(A)-09, Ahmadabad has not been challenged in ITAT.

**5.2** The Assessing Officer while passing the penalty order u/s 271(1)(c) has relied on the following decisions to define the term 'inaccurate particulars of income' :

1. **A.M. Shah & Co. vs. CIT (2000) 108 Taxmann 137 (Guj.) (HC)**
2. **CIT, Ahmadabad vs. Reliance Petroproducts (P) Ltd. (322 ITR 158) (SC)**
3. **Union of India vs. Dharmendra Textiles Processors 306 ITR 227 (2008) (SC).**

**5.3** I place reliance on the decision of Hon'ble Supreme Court in **B.A. Balasubramaniam and Bros. Co. V. CIT(1999) 26 ITR 977 (SC)** which found that the decision in CIT v Anwar Ali (1970) 76 ITR 696 holding that it is for the Revenue to prove concealment before levy of penalty is law, no longer holds the field, after the introduction of Explanation of section 271(1)(c), which specifically stipulates, that where the difference between the returned and assessed income exceeds, the

burden of proof is on the tax payer to prove there was no concealment. It can be now said that with reference to the language of law and the proceedings the law on the subject can be spelt out in the following propositions:

1. Wherever there is a difference between the returned and assessed income, there is an inference of concealment as a rule of law.
2. The responsibility for rebutting such inference is squarely on the taxpayer.
3. The assessee is expected to offer an explanation for the difference. Absence of any explanation, by itself, will merit penalty.
4. The explanation where offered, should not be found to be false.
5. Merely because the assess is not able to substantiate his explanation, penalty may not be exigible, if such explanation is bonafide and all the facts relating to the same and material to the computation of his total income have disclosed by him.

5.4 In this context, it is worthwhile to draw support from the decision of the Supreme Court in the case of **Union of India vs. Dharmendra Textile Processors (2008) 166 Taxman 65 (SC)** wherein the Apex Court held that penalty u/s 271(1)(c) is a civil liability and for attracting such civil liability even willful concealment is not an essential ingredient as in the case of prosecution (306 ITR 277, it was inter alia asserted by the Supreme Court that in order to invoke the provisions of Sec. 271(1)(c), existence of dishonest intention, deliberate failure to give correct particulars etc., is not necessary. The Explanation appended to Sec. 271(1)(c) indicates the element of strict liability of the assessee for concealment. It also indicates that the same is enacted to remedy the loss of revenue and willful concealment is not an essential ingredient.

5.5 I also rely on the decisions of the Hon'ble Supreme Court in the case of **CIT vs. Gold Coin Health Food Pvt. Ltd. [2008] 304 ITR 308 (SC)** wherein Hon'ble Apex Court has held that amendment made in Explanation 4 to section 271(1)(c)(iii) with effect from 01.04.2003 is clarificatory and therefore will have retrospective effect. Penalty u/s 271(1)(c) can be levied in the case of a loss return. As per section 271(1)(c) of Income Tax Act, 1961, if the assessing officer in course of any proceedings under the aforesaid Act is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income, if he may direct that such person shall pay by way of penalty a sum mentioned in the said section. The language of the section as mentioned above is unambiguous and clear in as much as that that the concealment of particulars or the furnishing of inaccurate

particulars is to be seen vis a vis the return of income filed by the assessee. In this case the Appellant willfully concealed income of Rs. 34,60,005/- in his return of income which is a violation of the law. On this score penalty proceedings were initiated for furnishing inaccurate particulars of income. This amount was added to the total income of the Appellant as undisclosed income and penalty proceedings u/s 271(1)(c) were initiated on this score for furnishing inaccurate particulars of income.

5.6 Accordingly, it is held that appellant has furnished inaccurate particulars of income for the amount of Rs. 34,60,005/-. The Assessing Officer has granted sufficient opportunities of being heard. Penalty proceedings U/s 271(1)(c) were initiated for furnishing inaccurate particulars of income of Rs.34,60,005/-. In the facts and the circumstances of the case and in law and on merits also, this penalty is leviable. The computation of penalty has been done correctly as per the provisions of I.T. Act, 1961 and only the minimum penalty of Rs.10,69,141/-, being 100% of tax sought to be evaded has been levied by the assessing officer. According to the Apex Court, mala fide intention is neither required to be established nor proved for the purpose of levy of penalty U/s 271(1)(c) of the Income Tax Act, 1961. In view of the above discussion, the penalty order U/s 271(1)(c) is upheld and the above ground of appeal is **dismissed**.

10. It is clearly evident that both the authorities i.e. the AO and the Id.CIT(A) have levied and confirmed the penalty mechanically without even applying their mind to the facts of the case.

11. Other glaring aspect which comes out from the assessment order is that both the AO and the Id.CIT(A) have not given any reasons as to how the mere addition on account of valuation of closing stock made to the income of the assessee tantamounted to furnishing inaccurate particulars/concealment of the income related to the same.

12. On going through the order of both the AO and the Ld.CIT(A), we are unable to understand what the addition exactly pertained to in relation to the valuation of the closing stock. The penalty order passed by the AO makes no mention either of the facts or the basis for the addition made. Therefore, there is no method for understanding as to how he arrived at the conclusion that the addition made on account of valuation of closing stock

tantamounted to furnishing inaccurate particulars of income for the levy of penalty under section 271(1)(c) of the Act.

13. Even the Id.CIT(A)'s order does not throw any light on this aspect except for reproducing the portion of the order of the Id.CIT(A) confirming the addition on account of valuation of stock in quantum proceedings, which is evident from the order of the Id.CIT(A) at para 5.1 which is reproduced above.

Therefore, the basis for arriving at the finding that the addition on account of valuation of closing stock tantamounted to furnishing inaccurate particulars of income for the levy of penalty under section 271(1)(c) of the Act, is completely absent both in the assessment order and even in the Id.CIT(A)'s order.

14. It appears that both the authorities have proceeded on the assumption that the addition made to the income of the assessee automatically tantamount to concealment/furnishing of inaccurate particulars of income, which is contrary to the law, which has been settled by the Hon'ble Apex Court in the case of CIT Vs. Reliance CIT Vs. Reliance Petro Products Pvt. Ltd. [322 ITR 158].

15. To sum up there is, we find, total non-application mind both by the AO and the Id.CIT(A) while levying and confirming the levy of penalty,

- levying penalty partly on addition to income which admittedly was deleted by Ld.CIT(A) and
- stating neither the facts of the addition to the income on which penalty was levied, nor the basis for finding it a fit case for levy of penalty u/s 271(1)(c) of the Act.

Therefore, we hold, the penalty is not sustainable.

16. Even otherwise, despite the AO and the CIT(A) making no effort to bring out the facts of the case leading to the addition made on account of valuation of the closing stock, the same were gone into by us from the assessment order and the order of the Id.CIT(A) in quantum proceedings. We find, on going through the same, that even on merits there is no case for charging the assessee with having concealed/furnished inaccurate particulars of income with regard to the valuation of the closing stock addition made so as to justify the levy of penalty under section 271(1)(c) of the Act.

17. What transpires from the orders of the authorities below in quantum proceedings is that the Revenue authorities found that the assessee's basis of valuation of its WIP was incorrect and adopting a different method the Revenue arrived at a different valuation of WIP resulting in addition to the income of the assessee to the tune of Rs.24,53,100/-. The order of the Id.CIT(A) in quantum proceedings and the AO reveals that the assessee was found to be a real estate developer, developing four schemes during the relevant period. The assessee had submitted that it was recognizing revenue on the basis of execution of sale deed i.e. project completion method. The assessee had stated to have incurred total project cost of Rs.4.37 crores and total area of the project was noted to be 2,915 sq.yards. The AO, on the basis of estimated cost of the total project, determined first the cost per square yard to be incurred on the project and on this basis, he allocated the actual cost incurred by the assessee during the year to the completed projects which were admittedly sold by the assessee during the year, and the balance of the cost was allocated to the WIP remaining. On this basis, he arrived at a valuation of the WIP at Rs.2,59,79,970/- while the

assessee had shown the valuation to be Rs.2,35,26,870/- and the difference of Rs.24,53,100/- was accordingly added to the income of the assessee. All these facts, are mentioned at page no.15 of the order of the ld.CIT(A).

18. We have noted that during appellate proceedings, before the ld.CIT(A), the assessee had offered an explanation that it had allocated cost to the project completed on actual basis and the remaining cost incurred during the year had been added to the valuation of WIP, and hence the difference in the valuation adopted by the assessee and the department. This submission of the assessee finds mention at para 6.1 of the CIT(A)'s order. The ld.CIT(A) however without finding any infirmity in the explanation of the assessee, confirmed the addition made by the AO and his finding is at para 6.2 of his order.

19. What transpires, therefore, is that the addition on account of valuation of closing stock is merely on account of difference in the basis of valuation of WIP adopted by the department and that adopted by the assessee. The assessee's justification for the method adopted by it, has not been countered or found fault in the same by the Revenue. We have noted that the assessee's explanation was that it had allocated actual cost, while the department's stand was that it ought to have allocated cost on estimate basis. The explanation of the assessee appears to be *bona fide* to us regarding the valuation of closing stock adopted by it. Therefore, in these facts and circumstances, merely because the addition on account of valuation of closing stock has been confirmed by the ld.CIT(A) the assessee cannot be said to have concealed or furnished inaccurate particulars of income. It is at most a case of the Revenue not being convinced with the explanation of the assessee, but there is no

factual or legal infirmity noted by the Department while rejecting the assessee's explanation. Therefore, even on merits, we find that there is no case for levy of penalty, and the same is, therefore, held to be not sustainable in law.

20. In conclusion both the authorities below have levied and confirmed penalty on two additions –

- One an addition which admittedly was deleted by the Id.CIT(A) i.e. addition made under section 36(1)(iii) of the Act amounting to Rs.10,06,905/-. The levy of penalty on this addition has no legs to stand on and is clearly not sustainable.
- The other addition on which penalty was levied, being on account of valuation of closing stock, is also found to be unsustainable due to detailed reasons stated by us above.

The penalty, therefore levied in the present case amounting to Rs.10,69,141/- is directed to be deleted.

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

**Order pronounced in the Court on 19<sup>th</sup> January, 2024 at Ahmedabad.**

**Sd/-  
(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

**Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad, dated 19/01/2024

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