

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member  
Sh. Anubhav Sharma, Judicial Member**

**ITA No. 853/Del/2023 : Asstt. Year: 2013-14**

**ITA No. 854/Del/2023 : Asstt. Year: 2014-15**

Shivnandan Prasad & Sons, 1, Garh Road, Hapur, Uttar Pradesh-245101 (ASSEESSEE)	Vs	Income Tax Officer, Ward-2(3)(5), Hapur, Uttar Pradesh-245101 (RESPONDENT)
<b>PAN No. ABXFS3672G</b>		

**Assessee by : Sh. Nitish Garg, CA**

**Revenue by : Sh. Javed Akhtar, CIT-DR**

<b>Date of Hearing: 05.02.2024</b>
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<b>Date of Pronouncement: 02.04.2024</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeals have been filed by the assessee against the orders of National Faceless Appeal Centre (NFAC), Delhi dated 16.02.2023.

2. Since, the issue involved in both the appeals are similar, they were heard together and being adjudicated by a common order. In ITA No. 853/Del/2023, following grounds have been raised by the assessee:

*"1. That under the facts and circumstances of the case the Ld. Commissioner of Income Tax (A), NFAC was not justified, not to decide the ground no. 2 of the grounds of appeal raised. The non-adjudication of ground no. 2, is arbitrary, unjust, uncalled for and illegal, ground no. 2 was as under:*

*(That under the facts and circumstances of the case, in absence of any finding of inaccurate particulars or concealment of income, the imposition of penalty u/s 271(1)(c) is arbitrary, unjust, uncalled for and in any case illegal.)*

*2 That under the facts and circumstances of the case and in absence of any finding of inaccurate particulars or concealment of income, the Ld. CIT (A) NFAC was not justified to confirm the penalty u/s 271(1)(c) on the basis of ITAT order. The confirmation of penalty u/s 271(1)(c) is arbitrary, unjust, uncalled for and in any case illegal."*

3. In this case, the penalty of Rs.2,99,000/- has been levied u/s 271(1)(c) of the Income Tax Act, 1961 after determination of the income of the assessee at 7% of the turnover.

4. Before us, the Id. Counsel of the assessee argued that the penalty cannot be levied for concealment of income on the amount determined on estimate basis. The Id. Counsel relied on the order of the Tribunal in the case NBK Infrastructure Pvt. Ltd. Vs. JCIT in ITA No. 625/Del/2018, order dated 07.06.2022, we find that the facts are similar to the case mentioned above. For the sake of ready reference, the said order is reproduced as under:

*"2. The Id. Counsel for the assessee, at the outset, submits that the Assessing Officer while completing the assessment under Section 143(3) of the Act estimated the net profit at 6.50% on its turnover as against net profit declared by the assessee at 5.89% of the turnover. The Id. Counsel submits that the Assessing Officer estimated net profit by rejecting the books of accounts as there was substantial increase in expenditure and by observing that no wage register, stock register was produced and, therefore, the books of accounts are not complete. The Assessing Officer*

*initiated penalty proceedings under Section 271(1)(c) of the Act and imposed penalty of Rs.4,87,837/- which was sustained by the Id. CIT (Appeals).*

*3. The Id. Counsel for the assessee placing reliance on the decision of the co-ordinate bench Delhi in the case of Mayasheel Construction Vs. DCIT in ITA. No. 7173/Del/2017 dated 21.06.2018 and the decision of the Mumbai Bench in the case of ACIT Vs. M/s. Colo Color Pvt. Ltd. in ITA. No. 5390/Mum/2018 dated 31.07.2020 submits that when the income is computed on estimated basis penalty under Section 271(1)(c) of the Act cannot be levied for concealment of income or for furnishing inaccurate particulars of income.*

*4. The Id. DR strongly supported the orders of the authorities below.*

*5. Heard rival submissions perused the orders of the authorities below and the case laws relied upon. The Assessing Officer made addition of Rs.15,78,761/- by estimating the net profit at 6.50% as against 5.89% declared by the assessee on its turnover. The Assessing Officer rejected the books of accounts and estimated the net profit and imposed penalty under Section 271(1)(c) of the Act which was sustained by the Id. CIT (Appeals).*

*6. The Hon'ble Punjab & Haryana High Court in the case of Hari Gopal Singh Vs. CIT 258 ITR 85 held that when the additions are made on estimate basis that by itself does not lead to the conclusion that the assessee either concealed the particulars of his income or furnished inaccurate particulars of such income. Similar view has*

*been taken by the Hon'ble Delhi High Court in the case of CIT Vs. Aero Traders Pvt. Ltd. 322 ITR 316 wherein the Hon'ble High Court affirmed the order of the Tribunal in holding that estimated rate of profit applied on turnover of the assessee does not amount to concealment or furnishing inaccurate particulars.*

*7. In the case on hand the Assessing Officer has only estimated the net profit by rejecting books of accounts and estimation of net profit at higher percentage than the declared percentage by the assessee and, therefore, it cannot conclusively prove of any concealment of income or furnishing of inaccurate particulars of such income. Thus, respectfully following the above said decisions, we delete the penalty levied under Section 271(1)(c) of the Act."*

5. In the absence of any change in the factual matrix and legal proposition, we hereby delete the penalty levied u/s 271(1)(c) of the Act.

6. In the result, the appeals of the assessee are allowed.  
Order Pronounced in the Open Court on 02/04/2024.

**Sd/-**  
**(Anubhav Sharma)**  
**Judicial Member**

**Sd/-**  
**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 02/04/2024**

\*Subodh Kumar Sr. PS\*

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**