

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRIB.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.500/Ind/2023**  
**Assessment Year:2010-11**

Shri Krishna Kumar Soni, Daak Bangla Road, Tarana (Assessee / Appellant)	<b><u>बनाम/</u></b> <b>Vs.</b>	ITO, 1(2), Ujjain (Revenue / Respondent)
<b>PAN: AHCP5349F</b>		
Assessee by	Shri Sharad Jain, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	16.05.2024	
Date of Pronouncement	20.05.2024	

**आदेश/O R D E R**

**Per Vijay Pal Rao, JM:**

This appeal by the assessee is directed against the order dated 30<sup>th</sup> November, 2023, of the Ld. CIT(A), NFAC, Delhi, arising from penalty order u/s 271(1)(c) of the Income-tax Act, 1961, for the assessment year 2010-11.

2. The assessee has raised following grounds of appeal :-
1. *That the Ld. CIT(A) has erred in dismissed the appeal.*
  2. *The appellant had applied under Vivad Se Vishwas Scheme & Form 5 was also issued and thus no, penalty u/s 271(1)(c) can be imposed.*
  3. *As the email id and mobile no. of the appellant was changed, he did not receive notices & thus there was reasonable cause for non-submission in the appeal proceedings.*

3. At the time of hearing,, the Ld. Authorized Representative of the assessee submitted that the AO has levied the penalty u/s 271(1)(c) of the Act in respect of addition of Rs. 11 lakhs on account of un-secured loan made while passing the assessment order u/s 143(3) of the Act dated 28<sup>th</sup> March, 2013. He has pointed out that in the quantum appeal, this Tribunal vide order dated 2<sup>nd</sup> August, 2016, set-aside the matter to the record of the AO for fresh adjudication after giving an opportunity to the assessee to produce evidence in support of his claim. Thus, the Ld. Authorized Representative of the assessee has submitted that when the addition itself was set-aside for fresh adjudication, the penalty levied u/s 271(1)(c) is not sustainable and the same is liable to be deleted. He has further submitted that thereafter the assessee has opted for Vivad Se Vishwas Scheme 2020, and settled the dispute as per Form 5 issued by the Competent Authorities on 31<sup>st</sup> October, 2021.

4. On the other hand, the Ld. Departmental Representative has not disputed the fact that this Tribunal in quantum appeal has set-aside the matter to the record of the AO for fresh adjudication and thereafter, the assessee has opted for Vivad Se Vishwas Scheme to settle the dispute arising from the set-aside proceedings.

5. Having considered the rival submissions and careful perusal of the records, at the out-set, we note that the AO has levied the penalty u/s 271(1)(c) vide order dated 28<sup>th</sup> March, 2013 in respect of addition of Rs. 11 lakhs on account of un-secured loan. IN the quantum appeal, the assessee challenged the said addition before this Tribunal and vide order dated 2<sup>nd</sup>

August, 2016, this Tribunal in I.T.A.No. 38 of 2015 has set-aside the matter to the record of the AO for fresh adjudication in para 5 of the said order as under :-

*" 5. I have heard the rival contentions of the parties and have gone through the orders of the authorities below in view of the facts and circumstances of the case. During the course of hearing, the Ld. Counsel for the assessee was asked to give the names and complete addresses of the depositors who have deposited the money in the accounts of creditors, Smt. Sapna Soni, Smt. Pallavi Soni and Shri Tulsiram Soni. The assessee submitted that all the transactions are from account payee cheques and, therefore, it may be treated as genuine but I am of the view that when all the amounts, which were given by the creditors, were deposited in the bank prior to giving of cheques, therefore, it is the duty of the assessee to give complete details regarding source of the case. All the creditors were unable to give names of the debtors from whom the amount was received in cash. Therefore, one more chance is given to the assessee to give evidence failing which the AO is at liberty to repeat the additions. I observe that out of three creditors one creditor is employee of the assessee and second is wife of the assessee, therefore, the AO is directed to verify the source of the creditors and decide the issue afresh after providing the assessee an opportunity of being heard."*

6. Accordingly, when the addition itself was no more in existence after the order of this Tribunal dated 2<sup>nd</sup> August, 2016, the penalty levied by the AO u/s 271(1)(c) vide order dated 29<sup>th</sup> March, 2016, would not survive and the same is liable to be deleted. We order accordingly.

7. The dispute was finally settled by the assessee under Vivad Se Vishwas Scheme and the assessee has filed form no. 5 dated 31<sup>st</sup> October, 2020, placed at page 40 of the paper book, whereby the competent authority has accepted declaration. Accordingly, the dispute has come to the end and no question of levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961, arises.

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

*Order pronounced in the open court on 20.05.2024.*

Sd/-  
B.M.BIYANI  
ACCOUNTANT MEMBER

Sd/-  
VIJAY PAL RAO  
JUDICIAL MEMBER

**Indore**

दिनांक/Dated : 20.05.2024

CPU/Sr. PS

*Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore*