

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.1516/Del/2024  
Assessment Year 2014-15

<b>Anil Kumar</b> H. No.467, Sector-2C Vashundra Near Amity Ghaziabad	Vs.	<b>ITO,</b> Ward 2(1)(1) Ghaziabad
TAN/PAN: AVRPK3950B		
(Appellant)		(Respondent)

Applicant by:	None		
Respondent by:	Shri Om Prakash, Sr.DR		
Date of hearing:	18	06	2024
Date of pronouncement:	27	06	2024

**ORDER**

**PER PRADIP KUMAR KEDIA - A.M.:**

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['CIT(A)' in short] dated 12.02.2024 arising from the penalty order dated 17.02.2017 passed by the Assessing Officer (AO) under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning A.Y. 2014-15.

2. As per the grounds of appeal, the assessee has challenged the imposition of penalty of Rs.4,49,000/- under Section 271(1)(c) on account of additions towards estimated income arising from share trading transactions.

3. When the matter was called for hearing, none appeared for the assessee. The matter was accordingly proceeded ex-parte.

4. It is seen from the assessment order dated 13.12.2016 that while making additions of Rs.14,26,200/- towards estimated share trading income, the assessee has formed satisfaction under Section 271(1B) of the Act holding that the assessee has furnished 'inaccurate particulars of income' towards such additions. It is further seen that the AO has however eventually imposed penalty on the ground that assessee has 'concealed the particulars of income'. Apparently, the basis and foundation in imposition of penalty has been altered by the AO himself. The penalty has been imposed on a different premise than the original satisfaction derived for imposition of penalty.

5. Needless to say, the imposition of penalty is dependent upon the 'satisfaction' derived by the AO. The ground for initiation of action by the AO under Section 271(1)(c) was allegation of 'furnishing of inaccurate particulars of income'. This ground has been substituted by the AO himself while passing the penalty order dated 17.02.2017. Thus, in the absence of continuity of the satisfaction of the AO, the penalty order passed by the AO is liable to struck down on this ground alone.

6. For such a view, I usefully refer to the decision of the Hon'ble Gujarat High Court in the case of *New Sorathia Engineering Company vs. CIT (2006) 282 ITR 642 (Guj.)* and *CIT vs. Manu Engineering Works (1980) 122 ITR 306 (Guj.)*. Similar view has been taken by the Co-ordinate Bench of the Tribunal in *Gian Chand Batia vs. DCIT, 61 ITD 24 (All.)*. Therefore, where the AO is not sure about the nature of default and has confirmed the penalty on an altogether different ground than for which satisfaction under Section 271(1B) was formed, the penal action

under Section 271(1)(c) of the Act is not sustainable in law.

7. Consequently, the penal order passed by the AO dated 17.02.2017 is set aside and the penalty imposed thereby is cancelled.

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

**Order pronounced in the open Court on 27<sup>th</sup> June, 2024.**

Sd/-

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**

DATED: June, 2024  
*Prabhat*