आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा॰ एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 697/JP/2023
निर्धारण वर्ष/Assessment Years : 2011-12

Income Tax Officer, Jaipur	बनाम Vs.	Shakuntlam Colonizers Pvt. Ltd., 103-104, Geetanjali Tower, Ajmer Road, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAKCS 2988 N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. P. C. Parwal, CA
राजस्व की ओर से/ Revenue by : Sh. Ajay Malik, CIT &
Sh. Anup Singh, Addl.CIT-DR

सुनवाई की तारीख/ Date of Hearing : 09/04/2024
उदघोषणा की तारीख/Date of Pronouncement: 27/06/2024

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal because the revenue is not satisfied with the order of the Commissioner of Income Tax (Appeals)- 1, Jaipur dated 26/12/2016 [here in after 'ld. CIT(A)'] for assessment year 2011-12 deleting the penalty which was levied vide order dated 30.03.2018 under section 271(1)(c) of the Income Tax Act, by the ITO-2(2), Jaipur.

2. In this appeal, the revenue has raised following ground: -

"Ground No. 1 whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A)(NFAC) has erred in deleting the penalty of Rs. 66,97,445/- levied by the AO u/s 271(1)(c) of the IT Act ignoring the fact that the assessee has not disclosed the profit on the advances received from the customer and furnished inaccurate particulars of income."

3. Succinctly, the fact as culled out from the records is that the assessee filed its return of income on 27.09.2011 declaring total income at Rs. Nil after setting off brought forward business loss of Rs. 21,56,933/-. The assessment order u/s 143(3)/154 of the IT Act, 1961 was passed on 27.03.2014 determining total income at Rs. 4,83,29,010/-. The assessee company engaged in the business of developing a real estate project named "South City" near chaksu, Jaipur. In the assessment order penalty proceedings were initiated on 27.03.2014.

3.1 Against that quantum order, the assessee preferred an appeal before the ld. CIT(A), in that proceeding the ld. CIT(A) enhanced the income and confirmed the initiation of the penalty proceedings. The assessee challenged that order of the ld. CIT(A) before the Income Tax Appellate Tribunal (ITAT) and the ITAT has confirmed the action of the ld. AO.

3.2 As held by the ld. AO that the assessee company in the project named "South City" near chaksu, followed the 'percentage completion

method'. As the assessee has not applied percentage completion method on advances received from the customer, and the ld. AO considered it in contravention of guidelines issued by the institute of Chartered Accountants of India and in violation of Accounting Standard 7 read with AS 9. Those standards states that real estate developers should follow percentage completion method. Accordingly, the ld. AO rejected the books of accounts u/s 145(3) of the IT. Act, 1961 and determined profit applying percentage completion method.

3.3 During the year under consideration the assessee has not disclosed actual sales therefore, the profit of Rs. 4,83,29,011/- arrived only from advances received from customers. This profit was not declared by the assessee while furnishing its return of income. As this action of the assessee of is of furnishing inaccurate particulars of its income which was liable for levy of penalty u/s. 271(1)(c). Therefore, penalty proceedings were initiated along with that assessment order.

3.4 Aggrieved from that order of the assessment an appeal was filed before the Ld. CIT(A)-1, Jaipur. The ld. CIT(A) vide order dated 26.12.2016 dismissed the appeal of the assessee and also enhanced the income of the

assessee by Rs. 96,66,531/- (Profit on account of advances from customers taken as Rs. 5,79,95,542/- instead of Rs. 4,83,29,011/- as computed by AO). The Ld. CIT(A) has also issued penalty notice u/s 271(1)(c) of I.T. Act, 1961 for enhancement of income by Rs. 96,66,531/-. Against the finding of ld. CIT(A) the assessee filed an appeal before ITAT, the said appeal was disposed off by ITAT vide order dated 22.12.2017. Since the penalty proceeding were initiated in the assessment proceeding a show cause for levy of penalty notices u/s 271(1)(c) of the I. T. Act, 1961 was again issued on 05.02.2018. The assessee filed a written reply on 28.03.2018 before the ld. AO. The ld. AO noted that the assessee has followed percentage completion method, however the same is not followed by assessee in accurate sprit during the year. He also noted that the assessee has not disclosed the income out of the advances received from the customer, as per guidelines of ICAI. During assessment proceedings the profit on advances received from customer computed and the finding of AO is confirmed by Ld. CIT(A) as well as ITAT. Since the finding has been confirmed by the ITAT, the ld. AO noted that the assessee has not derived its profit correctly to the extent of Rs. 1,97,04,164/. In view of the totality of the facts and keeping in view the provisions of section 271(1)(c), the ld. AO found that the assessee is guilty of furnishing inaccurate particulars of

income to the extent of amount of Rs. 1,97,04,164/-. For that reason, he hold that the 'Assessee' has committed default u/s 271(1)(c) of the IT Act and, therefore, penalty u/s 271(1)(c) imposed on the furnishing of inaccurate particulars of income for an amount of Rs. 66,97,445/-.

4. Aggrieved from the order of levying the penalty, assessee preferred an appeal before the ld. CIT(A). Apropos to the grounds so raised the relevant finding of the ld. CIT(A) is reiterated here in below:

> "5.3. DECISION
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> 5.3.1. In this case, the issue is that the appellant was following percentage of completion method, but in its calculation of income following the said method, it did not include the advances received from customers. On this aspect, the AO made the calculation of income and the same was upheld in ITAT. Based on the Income now assessed to tax, AO levied penalty for furnishing inaccurate particulars of income.
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> 5.3.2. It is seen that the appellant had disclosed all the particulars including the advances. It is not the case of the revenue that the appellant has shown false figures of amounts received as sales or advances. The issue is only of application of percentage of completion method which is itself based on estimation of final profits and the division thereof based on sales and advances for the year. Thus, the issue is of calculation of income based on estimations of total project profits and what are to be included. It is more a technical issue and legal issue of the concept, not an actual concealment of income or furnishing of inaccurate particulars. It is based on the appellant's own disicoure of figures and estimation of likely profits. Therefore, in such cases, it cannot be said that the appellant filed inaccurate particulars of income because the calculation differs.
> 5.3.3. As the appellant pointed out, in case of Dilip N. Shroff Vs. JCIT & Anr. (2007) 291 ITR 519/161, the Honourable Apex Court has held that if there is no evidence on material to show that the assessee had deliberately furnished inaccurate particulars of income a mere omission or negligence would not

constitute deliberate act of concealing particular so income or furnishing inaccurate particulars of income. The Supreme Court in case of CIT Vs. Reliance Petro products Pvt. Ltd. 322 ITR 158 has also stated that "It was not as if any statement made or any detail supplied was found to be factually incorrect. Hence, prima facie the assessee could not be held guilty of furnishing inaccurate particulars." The court went onto further held that mere claim of expenditure not found allowable is not inaccurate particulars of income. In current case, there is no such claim that was disallowed, in fact no claim of the figures is found to be incorrect. It is only the calculation of income that is found to be incorrect by inclusion of advances. Therefore, there is no case of furnishing inaccurate particulars of income.

5.3.4. The P&H High Court in case of CIT v. Modi Industrial Corporation (2010) 195 taxmann 68 and Delhi HC in case of CIT v. Aero Traders (P) Ltd (2010) 322 ITR 316 have held that the when income is based on estimate basis, penalty cannot be levied. The jurisdictional HC of Rajasthan for the appellant in 360 ITR 580 of CIT vs. Krishi Tyre Retreading & Rubber Industries has held that penalty cannot be levied for estimation of income. Percentage completion method is based on estimation of profit and therefore, penalty cannot be levied in this case. The AO is directed to delete the penalty.

6. In the result, appeal is allowed."

5. Feeling dissatisfied with the finding of the ld. CIT(A) the revenue has preferred the present appeal. The ld. DR representing the revenue vehemently argued that the assessee has violated the method of accounting followed. He submitted that the ITAT, Jaipur held that the assessee has not derived profit correctly and therefore a logical formula was derived to ascertain the correct income which has not been disclosed. The profit determined comes to Rs. 1,97,04,164/. On the said concealed income, the ld. AO levied penalty of Rs. 66,97,445/- u/s 271(1)(c) of the I.T.

Act. Against the levy of penalty in the first appeal, the Ld. CIT(A) relying on the decision of P & H high Court in case of CIT v. Modi Industrial Corporation (2010) 195 taxmann.com 68 and Delhi HC in case of CIT v. Aero Traders (P) Ltd (2010) 322 ITR 316, deleted the penalty holding that percentage completion method is based on estimation of profit and on that penalty cannot be levied. The Ld. CIT(A) has not appreciated the fact that the assessee has not disclosed the income on the advances received from the customer, as per the guidelines of ICAI, the assessee was required to disclose the profit on the advances received from the customer. Further, the additions made by AO during the assessment proceedings on account of profit on advances received from customer has been confirmed by the Ld. CIT(A) as well as ITAT. The ld. CIT(A) ignored these facts in deleting the penalty. Thus, based on these set of facts ld. CIT(A)'s decision in deleting the penalty is bad in law as well as on facts deserves to be set aside.

6. Per contra, the ld. AR of the assessee supported the finding recorded in the order of the ld. CIT(A). The ld. AR of the assessee supported the decision of the ld. CIT(A). He also argued that the assessee based on the regular method reported sales of Rs. 24.43 cr and last year 26.07. As per

the regular method of accounting followed the assessee has booked the income in respect of the where substantial risk and reward relating to ownership transferred to the buyer even if part development work is pending. Thus, it cannot be said that the assessee is not following project completion method as specified in Guidance note read with Accounting Standard -9. Without prejudice the ld. AR of the assessee submitted that there is no finding that the assessee has provided any inaccurate details even the figure reported by the assessee based on that the income is estimated. Even the figure of the advance cannot be made a basis because the same changes every year based on the sales booked by the assessee. The explanation and income offered by the assessee is not found incorrect and was bonafide. Even after the estimation of income the net result does not has any tax effect and there is no loss to the revenue as the net resultant figure is loss for an amount of Rs. 8,32,08,441/- [paper book page 12]. Based on that brief arguments the ld. AR of the assessee also relied upon the written submission which reads as under :

"*Facts:-*

1. Assessee company is engaged in the development of township project in collaboration with M/s Vastukar Colonizers Pvt. Ltd and M/s Vastukar Township Pvt. Ltd. For AY 11-12 assessee filed its return of income on 27.09.2011 declaring NIL income (PB 10-11) after claiming set off of brought forward business loss and depreciation. In the profit and loss a/c assessee has declared sales at Rs.1,68,51,290/-(previous year NIL) (PB 14) and in the

Balance Sheet advance received from customers is reflected in the current liability at Rs.24,43,27,637/-(previous year Rs.26,07,25,871/-)(PB-15). The accounting policy followed in relation to booking of revenue and treatment of advance received from customers is declared in the Financial Statement (PB - 16) as under:-

3. Sales Revenue, Related cost and Inventory Valuation

(a) Revenue from construction/development projects is recognized on the Percentage of Completion method of accounting in accordance with the Guidance Note on Recognition of revenue by Real Estate Developers, issued by the ICAI. Such revenue is recognized when all significant risks and rewards of ownership are transferred to the buyer and no effective control of the real estate to a degree usually associate with the ownership is retained.

(c) Basis of Quantification of Revenue & related cost

(iv)Booking money received in advance is considered as current liability till the recognition of revenue. Unearned revenue is also classified under current liability.

2. AO in the assessment proceedings observed that although the assesse has followed percentage completion method but in respect of 'advance received from customers' no income is offered to tax. Accordingly after rejecting the books of account, he computed the total income of the assessee at Rs.4,83,29,011/- as per the table given at page 29 & 30 of the assessment order as against the NIL income declared by the assesse. On this addition the AO initiated penalty proceeding u/s 271(1)(c) for furnishing inaccurate particulars of income.

3. In appeal the Ld. CIT(A) vide order dt.26.12.2016 dismissed the appeal of the assessee and enhanced the addition by Rs.96,66,531/- by applying percentage completion method by taking the Gross value of the plot against which advance is received from the customers at Rs.35,88,72,647/- as against the PCM method applied by AO with reference to the actual advance received from the customers at Rs.24,43,27,637/-.

4. Against the order of CIT(A), the assessee preferred second appeal before Hon'ble ITAT. The Hon'ble ITAT vide combined order dt.22.12.2017 (PB 21-80) in ITA No.105/JP/2017 in case of M/s Vastukar Township Pvt. Ltd for AY 12-13,in ITA 106/JP/2017 in case of M/s Vastukar colonizers Pvt. Ltd for AY 12-13 and in ITA No. 172/JP/2017 for AY 11-12 in case of the assessee held that on the advance received from the customers where plot buyers agreement has been executed, revenue to the extent of work completed needs to be

recognized. Accordingly the AO worked out the gross profit on advances received from customers as under:-

Particulars	Amount(Rs.)
Advances from customers(Sch.6 of Audited BS)	24,43,27,637/-
Revenue to be recognized(66.54% of Rs.24,43,27,637)	16,25,75,610/-
Less: Direct Cost(87.88% of Rs.16,25,75,610)	14,28,71,446/-
Gross Profit	1,97,04,164/-

However after considering the carried forward unabsorbed business loss and depreciation the total income is determined as Rs.NIL.

5. In the penalty proceedings the assessee filed a detailed reply as reproduced at Para 7 page 4-8 of the penalty order. AO however held that even when addition is based on estimate concealment penalty can be levied. Assessee has followed Percentage completion method however the same is not followed in accurate spirit during the year as it has not disclosed income on advances received from customers whereas as per ICAI guidelines he was required to disclose the same. Therefore assessee is guilty of furnishing inaccurate particulars of income to the extent of Rs.1,97,04,164/- on which penalty of Rs.66,97,445/- was imposed.

6. The Ld. CIT(A) at Para 5.3.2 observed that appellant has disclosed all the particulars including the advances. It is not the e of the revenue that appellant has shown false figure of amounts received as sales or advances. The issue is only of application of percentage of completion method which is itself based on estimation of final profits and the division thereof based on sales and advances for the year. It is more a technical issue and legal issue of concept, not an actual concealment of income or furnishing of inaccurate particulars. He relied on the decision of Hon'ble Supreme Court in case of Dilip N Shroff Vs. DCIT 291 ITR 519, in case of CIT Vs. Reliance Petro Products Pvt Ltd 322 ITR 158 and also on the decision of P&H High Court, Delhi High Court and Rajasthan High Court as referred in Para 5.3.4 and thus deleted the penalty holding that it cannot be said that the appellant filed inaccurate particulars of income because the calculation differs.

Submission:-

1. It is submitted that the only issue in this case is whether the assesse has furnished inaccurate particulars of income so as to make him liable for penalty u/s 271(1)(c) of the IT Act. The definition of "furnishing inaccurate particulars of income" is not given in the act. However in Webster's dictionary the word "inaccurate" has been defined as 'not accurate, not exact or correct, not according to truth, erroneous, as an inaccurate statement'. Therefore unless it is found that any information or detail given in the return of income is not accurate or correct it cannot be held that there is furnishing of inaccurate

particulars. It has been held in various cases that where assessee has furnished all the details & such details were not found to be false or bogus, only because the claim of assessee is not allowed would not mean that assessee has furnished inaccurate particulars of income. For this purpose, reliance is placed on the decision of Hon'ble Supreme Court in case of CIT Vs. Reliance Petro products Pvt. Ltd. 322 ITR 158 (SC) where it was held that a glance at the provisions of section 271(1)(c) of the Income-tax Act, 1961 suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word "particulars" used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous. Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars.

2. From the facts stated above it can be noted that the assessee has disclosed the facts of the advance received from customers which was outstanding as on 31.03.2011 at Rs.24,43,27,637/- in the Balance Sheet filed along with the Return of Income. No inaccuracy is found in such amount. On the advance received from the customers the assessee has not recognized the revenue for the reason the condition of revenue recognition is not satisfied since assessee has not transferred to the buyer significant risk and reward of ownership in as much as according to Para 6 to 10 of the plot buyers agreement if the buyer default in depositing the installment amount maximum two times, the assessee shall have the right to cancel the agreement and forfeit the earnest money, interest on delayed payment etc. and the amount paid over and above the interest money shall be refunded to the buyers only after realizing such amount from resale of plot. It is also provided in the plot buyer's agreement that the actual, rightful and meaningful possession shall be handed over to the buyer only after receiving entire sales consideration. Therefore the assessee has been consistently following the system of revenue recognition when the entire sales consideration is received from the customer irrespective of whether the sale deed is executed or not. In the subsequent years when

entire sales consideration is received from these customers, revenue has been recognized. The revenue so recognized in the subsequent years has been accepted by the department. Thus in fact, to the extent the advance received from the customers which has been subsequently recognized as revenue by the assessee, has suffered double taxation. Therefore only because the claim of the assessee that advance received from the customers should not be considered for revenue recognition till the entire consideration is received from the customers is not accepted would not lead to an inference that assessee has furnished inaccurate particulars of income and thus the penalty levied on the addition made by the AO consequent to the order of the Hon'ble ITAT, more particularly when ultimately the total income is assessed at NIL is unjustified. Reliance in this connection is place on the following cases:

Equest India (P) Ltd. Vs. ITO (2011) 136 TTJ 574/48 DTR 386 (Mum.) (Trib.)
Merely because the assessee has a different perception of the situation than the AO, even though, in the ultimate analysis, the stand of the AO is to be upheld, it cannot be said that the assessee has concealed any particulars. The admission or rejection of a claim is a subjective exercise and whether a claim is accepted or rejected has nothing to do with furnishing of inaccurate particulars of income. What is a correct claim and what is an incorrect claim is a matter of opinion. Raising a legal claim, even if it is ultimately found to be legally unacceptable, cannot amount to furnishing of inaccurate particulars of income. The development of law is a dynamic process which is affected by the innumerable factors, and it is always an ongoing exercise. In such circumstances, a bona fide legal claim by the assessee being visited with penal consequences only because it has not been accepted thus far by the tax authorities or judicial authorities is an absurdity. In any event, the connotations of expression 'particulars of income' do not extend to the issues of interpretation of law and as such making a claim, which is found to be unacceptable in law, cannot be treated as furnishing of inaccurate particulars of income.

ACIT Vs. Torque Pharmaceuticals Pvt. Ltd. (2015) 125 DTR 236 (Chd.) (Trib.)
Assessee having made bona fide claim of deduction in the return and disclosed the entire facts, it cannot be held that the assessee has concealed particulars of income or filed inaccurate particulars of income simply because the revenue authorities did not accept the assessee's claim and made additions. Therefore, penalty u/s 271(1)(c) could not be levied.

Meridian Impex Vs. ACIT (2014) 107 DTR 89/149 ITD 29 (Rajkot) (Trib.) (TM)
The assessee having made claim for deduction u/s 80IB on the basis of its legal perception, furnishing all the material facts relevant to the computation of total income and later withdrawn the claim during the assessment proceedings after discovering that it was not admissible, it was a bona fide claim and did not amount to filing of inaccurate particulars of income. Therefore, assessee is not liable for penalty u/s 271(1)(c).

3. It is submitted that as per explanation 1 to section 271(1)(c) amount added by the AO is deemed to represent the income in respect of which particulars have been concealed provided that assessee fails to offer any explanation or offers an explanation which is found to be false or offers an explanation which he is not able to substantiate and fails to prove that such explanation is bonafide and that all the facts relating to the same and material to the computation the total income has been disclosed by him. In the present case the fact relating to the advance received from customer is disclosed by the assessee and he has given an explanation as to why the advance received from customers is not considered for revenue recognition. The explanation so given is bonafide and not found to be false by the AO. Therefore explanation 1 to section 271(1)(c) is not applicable and therefore the penalty levied by the AO is not as per law. Reliance in this connection is based on the following cases-

Dilip N. Shroff Vs. JCIT & Anr.(2007) 291 ITR 519(SC)
Penalty under s. 271(1)(c) is not automatic. Only in the event the factors enumerated in cls. (A) and (B) of Expln. 1 are satisfied and a finding in this behalf is arrived at by the AO, the legal fiction created there under would be attracted. The expression "conceal" is of great importance. It signifies a deliberate act or omission on the part of the assessee. Such deliberate act must be either for the purpose of concealment of income or furnishing of inaccurate particulars. A mere omission or negligence would not constitute a deliberate act of concealment of income or furnishing of inaccurate particulars. Primary burden of proof to establish that assessee has concealed the amount or furnished inaccurate particulars of income, therefore, is on the revenue. While considering as to whether the assessee has been able to discharge his burden, the AO should not begin with the presumption that he is guilty. Once the primary burden of proof is discharged, the secondary burden of proof would shift on the assessee. In the present case, the authorities did not show as to what were the inaccurate particulars furnished by the assessee or what should have been accepted principles of valuation. Only because the opinion of registered valuer, an expert appointed in terms of a statutory scheme is not accepted or some other expert gives another opinion, is not by itself sufficient for arriving at a conclusion that the assessee had furnished inaccurate particulars attracting penalty under s. 271(1)(c), Expln.

T.Ashok Pai Vs. CIT (2007) 292 ITR 11 (SC)
If an explanation given by the assessee has been treated as bona fide, the question of failing to discharge the burden under Explanation to s. 271(1)(c) would not arise. Before having recourse to the Explanation, the AO must arrive at a finding that explanation offered by assessee, if any, was false. Assessee must be found to have failed to prove that such explanation is not only not bona fide but all the facts relating to the same and material to the income were not disclosed by him. Order imposing penalty being quasi-criminal in nature, burden lies on the Department to establish that assessee had concealed his income. In

penalty proceedings, matter must be considered afresh from an angle different from assessment. It being not a case where penalty was imposed for breach of commercial statute where existence of bona fide may not be of much importance and also not a case where penalty was mandatorily imposable, penalty under s. 271(1)(c) was not called for.

4. Without prejudice to above it can be noted that as stated in the facts above the assesse along with the Return of income has filed the Financial statements wherein at Schedule 6 (PB 15) under the head Current Liabilities & Provisions assesse has shown advance received from customers of Rs.24,43,27,637/- as against Rs.26,07,25,871/- shown in the previous year. Thus the amount of advance received from customer has reduced by Rs. 1,63,98,234/- and the same is a part of revenue of Rs.1,68,51,290/- recognized as sales in the profit & loss account. Therefore, even if it is held that under the PCM method the advance received from the customers which is outstanding as on 31.03.2011 at Rs.24,43,27,637/- is to be considered for recognizing the revenue, still the same is not to be considered for recognition of revenue for the year under consideration in as much as such outstanding advance as on 31.03.2010 was Rs.26,07,25,871/- and thus during the year under consideration the amount of outstanding advance from customers has reduced. Hence even though the revenue in respect of such outstanding advance is assessed in the year under consideration, the same cannot be a basis for levying penalty on such amount as legally such revenue does not pertain to the year under consideration rather pertain to the previous year.

5. The AO in the penalty order without distinguishing various case laws has relied upon the decision of the Supreme Court in case of Dharmendra Textile Processors 306 ITR 277 where it is held that the penalty u/s 271(1)(c) is a civil liability and for attracting such civil liability, willful concealment is not an essential ingredient. It has also relied on some other judgments to held that even when addition is made on estimate, concealment penalty can be levied. Of course there is no dispute as to the proposition laid down by Supreme Court or other High Courts but those propositions has to be considered and applied with reference to the facts of a particular case. Though penalty is a civil liability and *mens rea* is not to be proved by the revenue, the issue in the present case is whether assessee has furnished any inaccurate particulars of its income so as to attract penalty u/s 271(1)(c). It is not the case of the AO that there is any inaccuracy in the amount of advance received from the customers. Only because as per the AO on such advance assessee was required to disclose the profit would not lead to a presumption that assessee has furnished inaccurate particulars of income more particularly when the assessee has given bonafide explanation as to why on such advance received he has not recognized the revenue.

6. It may be noted that similar penalty u/s 271(1)(c) was imposed in the case of joint developer M/s Vastukar Township Private Limited for Rs.38,48,357/- for AY 2012-13 which was deleted by CIT(A), NFAC vide order dt.30.08.2021. The findings of the CIT(A) (PB 88-90) are as under:

"4.3. I have considered the matter. After careful perusal of the facts in the record, it is seen that the issue leading to addition of income and ending with imposition of penalty u/s 271 (1) (c) of the Act is the guidelines issued by ICAI for accounting of income in case of assessee engaged in development of real estate. The guidelines are dealt with at length by the AO, the Ld. CIT (A) and the Hon'ble Tribunal with regard to the accounting method, "Percentage completion method (Per CM in short) claimed to have been followed by the appellant. The bone of contention between the AO and assessee rests on guidance note issued by ICAI in 2006.

Very briefly, three conditions are to be satisfied before recognition of revenue. They are:
1. The seller has transferred to the buyer all significant risk and rewards of ownership and the seller retain no effective control of the real estate to a degree usually associated with the ownership
2. No significant uncertainty exist regarding the amount of consideration that will be derives from real estate sales
3. It is not unreasonable to expect ultimate collection.

4.3.1. The assessee had two categories of receipts. One was classified as 'out of properties on which sale deed have already been executed'. Another set of properties were those on which 'plot buyers agreement have been entered into and on which assessee had received advances'. In the first category of properties, assessee followed Per CM. But in the second category, though appellant claimed that it followed, Per CM, it did not offer any income. Rather, income was offered in the next year whence sale deeds were executed. However, in the assessment order, in cases of properties where sale deeds have been executed, the AO, instead of following Per CM, practically followed project computation method. On advance received, he followed Per CM. The Ld. CIT (A) corrected the AO in respect of properties of first category by following Per CM. With regard to properties where plot buyers agreements were drawn, both AO and Ld. CIT (A) followed Per CM. But the Ld. CIT (A) went a step ahead and included in the accruals, not only the advances, but the entire amount of sale consideration. When the matter reached Hon'ble Tribunal, it confirmed the action of Ld. CIT (A) with regard to properties in which sale deed were already executed. But in respect of properties where advances were received, it restricted the sum on which revenue is to be accounted, on the advances received only and not on total agreement value. The order of Ld. CIT (A) was set aside to that extent.

4.3.2. The point attempted to be highlighted is that even the AO, Ld. CIT (A) and Hon'ble Tribunal had delicate differences of opinion in matter of interpretation of ICAI guideline on the matter. The appellant had its own interpretation. The Per CM it followed for properties in which sale deeds have been executed been upheld by the Ld CIT(A). As regards property on which agreement to transfer were entered into and where advances were received, it interpreted the ICAI guideline (supra) and took the view that revenue, which can be assessed to tax, had not yet accrued. It had taken the view that on the amount of advances received, significant risks and rewards of ownership was yet to be transferred to the prospective buyers in as much as it still had the right to cancel the agreement in the event of the buyers failing to pay installment as stipulated. Meaningful transfer of ownership was to be given to the buyers on receipt of entire sale consideration. The contention of the appellant was also that it had consistently been following that system of accounting. It also had quoted several Court decision on the matter. Therefore, it is seen that the issue on which addition was made and contested is not totally beyond the realm being debatable. Even the opinions of Ld CIT (A) and Hon'ble ITAT had delicate differences between.

4.3.3. The whole discussion boils down to whether the variation of interpretation of the nature discussed above can be called as filing of inaccurate particulars of income. The veracity of facts likes number of properties sold; date and amount for which the sales were affected are not in dispute. There is no report of filing incorrect facts. Mere submission of incorrect claim due to difference in interpretation of rules or guidelines cannot fall under category of "filing incorrect particulars of income". In certain instances, making incorrect claim can also result into penalty if such claim is blatantly wrong on facts or if the claim can be ascribed to manifest attempt at evasion of payment of tax. In case of present assessee, it had not hidden the fact of receipt of advances. The factum of receipt of advance was apparent from its record. It showed the advances as income in the next year. On careful appraisal of the matter, I am constrained to take the view that the case appellant is certainly covered by decision of Hon'ble Apex Court in the case of CIT Vs Reliance Petro Products Private Limited 322 ITR 158 (SC).

In view of the above, ground No.1 of the appeal is allowed."

In view of above the order of CIT (A) deleting the levy of penalty by upheld by dismissing the ground of the revenue."

7. To support the contention so raised in the written submission filed by the ld. AR of the assessee placed reliance on the following evidence / records / decisions:

S.No.	Particulars	Page No.
1.	Copy of written submission and paper book filed before CIT(A)	1-9
2.	Copy of ITR along with computation of total income filed on 27.09.2011.	10-12
3.	Copy of Audited Financial Statements as on 31.03.2011 along with significant accounting policies	13-20
4.	Copy of Hon'ble ITAT order dt. 22.12.2017 in case of assessee & Vastukar Township Pvt. Ltd.	21-80
5.	Copy of CIT(A) order dt. 30.08.2021 in case of Vastukar Township Pvt. Ltd. deleting levy of penalty u/s 271 (1)(c)	81-90
6.	CBDT Circular no. 14 dated 11.04.55	30-34

8. We have heard the rival contentions and perused the material placed on record. Before us both the parties supported the findings recorded in the orders of the lower authority as favorable to them. The main issue raised by the revenue in this appeal is whether the ld. CIT(A) erred in law as well as on facts while deleting the penalty of Rs. 66,97,445/- levied by the AO u/s 271(1)(c) of the IT Act. The revenue also contended that while considering the appeal of the assessee ld. CIT(A) ignored the fact that the assessee has not disclosed the profit on the advances received from the customer and furnished inaccurate particulars of income. When the estimation of income is confirmed on merits even till the ITAT and the assessee has not

challenged that finding the action of the ld. CIT(A) in deleting the penalty is against the facts of the case and therefore, this appeal by the revenue.

9. The fact related to the dispute is that the Assessee company is engaged in the development of township project in collaboration with M/s Vastukar Colonizers Pvt. Ltd and M/s Vastukar Township Pvt. Ltd. For AY 11-12. For the year under consideration the assessee filed its return of income on 27.09.2011 declaring NIL income (APB 10-11) after claiming set off of brought forward business loss and depreciation. As it is evident from the record that the profit and loss account filed by the assessee wherein sales at Rs.1,68,51,290/-(previous year NIL) (APB 14) was disclosed. In the Balance Sheet assessee also disclosed advance received from customers as current liability at Rs.24,43,27,637/-(previous year Rs.26,07,25,871/-)(APB-15). The accounting policy regularly followed in relation to booking of revenue and treatment of advance received from customers is declared in the Financial Statement (APB -16) which reads as under:-

> 3. Sales Revenue, Related cost and Inventory Valuation
>
> (b) Revenue from construction/development projects is recognized on the Percentage of Completion method of accounting in accordance with the

Guidance Note on Recognition of revenue by Real Estate Developers, issued by the ICAI. Such revenue is recognized when all significant risks and rewards of ownership are transferred to the buyer and no effective control of the real estate to a degree usually associate with the ownership is retained.

(c) Basis of Quantification of Revenue & related cost

(iv)Booking money received in advance is considered as current liability till the recognition of revenue. Unearned revenue is also classified under current liability.

10. In the assessment proceeding the ld. AO based on the above notes noted that the assessee though followed percentage completion method, but in respect of 'advance received from customers' no income is offered to tax. The ld. AO made this lapse on the part of the assessee as reason to reject the books of account. After doing so, he computed the total income of the assessee at Rs.4,83,29,011/- as against the NIL income declared by the assessee. The order of the assessment was challenged before the ld. CIT(A) who vide order dated 26.12.2016 dismissed the appeal of the assessee and has also enhanced the addition by an amount of Rs.96,66,531/- by applying percentage completion method by taking the Gross value of the plot against which advance is received from the customers at Rs.35,88,72,647/- as against the PCM method applied by the ld. AO with reference to the actual advance received from the customers at Rs.24,43,27,637/-. Assessee challenged the order of the ld. CIT(A) before ITAT. ITAT vide order dated 22.12.2017 held that on the

advance received from the customers where plot buyers' agreement has been executed, revenue to the extent of work completed needs to be recognized. However, after considering the carried forward unabsorbed business loss and depreciation the total income remained at Rs. NIL, as there was brough forward loss of Rs. 8,32,08,441/-.

11. As the penalty proceeding was initiated in the assessment order and issue become crystalized from the order of the ITAT ld. AO held that when addition is based on estimation, concealment penalty is leviable. The method of accounting declared by the assessee as Percentage completion method, however the same is not followed on the advances received from customers. Whereas as per ICAI guidelines assessee was required to disclose the same. Therefore, the ld. AO noted that the assessee is guilty of furnishing inaccurate particulars of income to the extent of Rs.1,97,04,164/- on which penalty of Rs.66,97,445/- was ordered to be levied.

12. That order levying penalty was challenged before the Ld. CIT(A), who observed that the assessee has disclosed all the particulars including the advances. It is not a case of the revenue that the assessee has shown

false figures of amounts received as sales or advances. The issue is only of income on the advance received by the assessee and upon that advance so received the ld. AO estimated the percentage of profit. It is more a technical issue and legal issue of concept, not an actual concealment of income or furnishing of inaccurate particulars. While deciding the appeal of the assessee the ld. CIT(A) relied on the decision of Hon'ble Supreme Court in case of Dilip N Shroff Vs. DCIT 291 ITR 519, CIT Vs. Reliance Petro Products Pvt Ltd 322 ITR 158 and decision of P&H High Court, Delhi High Court and Rajasthan High Court as referred in Para 5.3.4 of his order. Based on that finding he deleted the penalty holding that it cannot be said that the assessee is on fault of providing inaccurate particulars of income because the calculation differs.

13. Revenue in the grounds so raised contended that *the Ld. CIT(A)(NFAC) has erred in deleting the penalty of Rs. 66,97,445/- levied by the AO u/s 271(1)(c) of the IT Act ignoring the fact that the assessee has not disclosed the profit on the advances received from the customer and furnished inaccurate particulars of income.* So first we would like to examine what tantamount to "furnishing inaccurate particulars of income", the Act does not give any definition. Thus, we see the meaning in normal

parlance what amounts to inaccurate particulars of income, it refer to a situation where a taxpayer reports income but furnishes **inaccurate details related to income**, such as incorrect amounts or incorrect descriptions of the source of income. The term further refers to the act of providing incorrect details about one's income and could involve mistakes or omissions in the data provided to tax authorities and is considered a serious matter as it can lead to penalties or legal action. It is distinct from 'concealment of income', which is a deliberate act to hide income. As it is evident from the records that the assessee has disclosed the sales where the risks and reward is passed even though the work is going on but the ld. AO contended that in addition the assessee is supposed to pay tax on the advances so received by the assessee and the income on that advances was estimated. The assessee contended that since there was loss the same was not challenged by the assessee. The bench noted that there is no dispute about the number of units sold, the amount of the advance received and accounted. The only difference as to how the income to be computed. Here the ld. AO in addition estimated the income on the advances. The ld. AR of the assessee submitted that even after the addition so made there is sufficient loss available in the hands of the assessee and therefore, there is no loss to the revenue and there is no

allegation by the ld. AO that there is any error or misreporting of the data and information by the assessee. The only addition was estimated income on the advances. While examining the issue of levy of penalty in the case CIT vs. Reliance Petroproducts Pvt Ltd reported in 189 taxman 322 the Hon'ble apex court dealt with the meaning of the term inaccurate particular by as "the word 'particulars' must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous". Thus, to arrive at the conclusion that the assessee has furnished inaccurate particulars of income, it has to be tested whether the detail furnished in the return of income is incorrect or erroneous or falls. In other words, the element of consciousness in furnishing inaccurate particulars of income coupled with circumstantial evidence should be present in the particular case. Unless the characters of inaccurate particulars of income as discussed above are present in any case, the penalty provisions under section 271(1)(c) of the Act cannot be attracted. Here in this case, we note that the assessee has already placed on record the details while filling the return of income. From the same set of records the ld. AO noted that the income offered on advances remained to be taxed because the assessee follows the percentage completion method of accounting while computing the income. Thus, on the advances so

accounted the income was estimated and that income was estimated from the same information or data available on record. Even after the addition so made for an amount of Rs.1,97,04,164/- the final income to be taxed remained negative as there is brough forward loss of Rs. 8,32,08,441/-. Thus, in fact there is no loss of revenue even after the consideration of income as estimated.

14. We also take note of the fact that as per explanation 1 to section 271(1)(c) amount added by the AO is deemed to represent the income in respect of which particulars have been concealed provided that assessee fails to offer any explanation or offers an explanation which is found to be false or offers an explanation which he is not able to substantiate and fails to prove that such explanation is bonafide and that all the facts relating to the same and material to the computation the total income has been disclosed by him. In the present case the facts relating to the advance received from customer is disclosed by the assessee and he has given an explanation as to why the advance received from customers is not considered for revenue recognition. The explanation so given is bonafide and not found to be false by the AO. Therefore explanation 1 to section 271(1)(c) is not applicable and therefore the penalty levied by the AO is

not as per law. We derive strength of our view from the decision of Dilip N. Shroff Vs. JCIT & Anr.(2007) 291 ITR 519(SC) where in apex court held “that penalty under s. 271(1)(c) is not automatic. Only in the event the factors enumerated in clause (A) and (B) of Explanation 1 are satisfied and a finding in this behalf is arrived at by the AO, the legal fiction created there under would be attracted. The expression "conceal" is of great importance. It signifies a deliberate act or omission on the part of the assessee. Such a deliberate act must be either for the purpose of concealment of income or furnishing of inaccurate particulars. A mere omission or negligence would not constitute a deliberate act of concealment of income or furnishing of inaccurate particulars. Primary burden of proof to establish that assessee has concealed the amount or furnished inaccurate particulars of income, therefore, is on the revenue. While considering as to whether the assessee has been able to discharge his burden, the AO should not begin with the presumption that he is guilty. Once the primary burden of proof is discharged, the secondary burden of proof would shift on the assessee.” In the present case, the authorities did not show as to what were the inaccurate particulars furnished by the assessee. Only because the method of accounting followed was not considered by the ld. AO and he charged the tax on the advances

received for the proposed transaction on which the ld. AO charged the income on the estimated rate that income so added is not by itself sufficient for arriving at a conclusion that the assessee had furnished inaccurate particulars attracting penalty under s. 271(1)(c) of the Act. As it is evident that the assessee has disclosed the facts of the advance received from customers which was outstanding as on 31.03.2011 at Rs.24,43,27,637/- in the Balance Sheet filed along with the Return of Income. No inaccuracy is found in such disclosure made. On the advance received from the customers the assessee has not recognized the revenue for the reason the condition of revenue recognition is not satisfied since assessee has not transferred to the buyer significant risk and reward of ownership in as much as according to Para 6 to 10 of the plot buyers agreement if the buyer default in depositing the installment amount maximum two times, the assessee shall have the right to cancel the agreement and forfeit the earnest money, interest on delayed payment etc. and the amount paid over and above the interest money shall be refunded to the buyers only after realizing such amount from resale of plot. It is also provided in the plot buyer's agreement that the actual, rightful and meaningful possession shall be handed over to the buyer only after receiving entire sales consideration. Therefore, the assessee has

been consistently following the system of revenue recognition when the entire sales consideration is received from the customer irrespective of whether the sale deed is executed or not. In the subsequent years when entire sales consideration is received from these customers, revenue has been recognized. The revenue recognized in the subsequent years has been accepted by the department thus the ld. AR of the assessee submitted that to the extent the advance received from the customers which has been subsequently recognized as revenue by the assessee, has suffered double taxation and because of the only reason that ld. AO estimated advance received from the customers and taxed the income based on estimation. The assessee contended that based on the agreement with the buyer's revenue recognition was not considered. The same is offered when the entire consideration is received from the customers. That contention of the assessee not accepted would not lead to an inference that assessee has furnished inaccurate particulars of income and thus the penalty levied on the addition made by the AO consequent to the order of the Hon'ble ITAT, more particularly when ultimately the total income is assessed at NIL is not justified.

15. The bench also noted that we allowing the appeal of the assessee the ld. CIT(A) has followed the decision of the jurisdictional High Court of Rajasthan in the case of CIT vs. Krishi Tyre Retreading & Rubber Industries reported at 360 ITR 580 wherein it was held that that:

> **7.** We have considered the arguments advanced by the learned counsel for the parties and have also perused the impugned order.
>
> **8.** On a perusal of facts, it is apparent that the Tribunal in the regular proceedings had upheld the addition by observing that the Assessing Officer, though justified in making some addition, however, it observed that even the Assessing Officer had made an estimated addition for he was not sure as to exact amount of addition, to be made and considering the peculiar facts of the case, the Tribunal modified the order by observing that "we find justification in the order of the lower authorities who have rightly made the addition on estimate basis. But the same is looking on higher side due to the peculiar facts and circumstances of the case. By modifying both the orders of the lower authorities, we restrict the addition to Rs. 1,00,000 (Rs. one lakh) only. Thus, the assessee will get the relief of Rs.44,000 (Rs. forty four thousand) from the orders of the lower authorities on ad hoc basis".
>
> **9.** On a perusal of the facts stated hereinbefore, it transpired that the addition has been sustained purely on estimate basis and, in our view, no positive fact or finding has been found so as to even make the said addition. It is, according to us, a pure guess work and, in our view, on such guess work or estimation, no penalty under section 271(1)(c) of the Act can be said to be leviable. For imposing penalty under section 271(1)(c) of the Act, the Assessing Officer has to clearly prove the conduct of the assessee, which in this case, has not been proved. Merely because the books of account of the assessee were rejected or estimated addition was made, in our view, no penalty is leviable. The assessee offered an explanation, which could not be termed as not bona fide. In the absence of any corroborative evidence to prove the charge of concealment, in our view, the penalty could not be imposed.
>
> **10.** Penalty proceedings are entirely distinct from assessment proceedings and, howsoever relevant and good, the findings in assessment proceedings may be, they are not conclusive so far as the penalty proceedings are concerned.
>
> **11.** From the above discussion, it can be seen that the opinion of the Tribunal with respect to the deletion is based on appreciation of evidence on record.
>
> **12.** The hon'ble apex court in the case of *Dilip N. Shroff* v. *Jt. CIT* [2007] 291 ITR 519/161 Taxman 218 has held that if there is no evidence on material to

show that the assessee had deliberately furnished inaccurate particulars and there was any mala fide intention on his part so as to make him liable for penalty. A mere omission or negligence would not constitute deliberate act of concealing particulars of income or suppressed or furnished inaccurate particulars of income.

13. The Patna High Court in the case of *CIT* v. *Kailash Crockery House* [1999] 235 ITR 544/107 Taxman 386, had an occasion to consider the issue of penalty under section 271(1)(c) on the basis of the fact that the gross profit rate shown by the assessee was found to be low and trading addition was made on estimate basis though the trading addition was sustained by the Tribunal but in so far as penalty under section 271(1)(c) is concerned, it held that the trading addition had been made on the basis of an estimate and on account of estimated trading addition penalty could not be levied under section 271(1)(c) of the Income-tax Act.

14. The Punjab and Haryana High Court in the case of *CIT* v. *Metal Products of India* [1984] 150 ITR 714/18 Taxman 412, has held that merely because the addition has been made on estimate basis that did not automatically lead to the conclusion that there was failure to return the correct income.

15. The Gujarat High Court in the case of *CIT* v. *Whitelene Chemicals* [2014] 360ITR 385/[2013] 32 taxmann.com 192/214 Taxman 93 (Mag.) (Guj) has observed that no penalty can be imposed merely because account books of the assessee were rejected and that profit was estimated on the basis of fair gross profit ratio. The assessee filed its explanation which could not be termed as not bona fide and, accordingly, the Gujarat High Court came to a conclusion that mere rejection of books of account and estimation of profit cannot be a ground for imposition of penalty.

16. The Gujarat High Court in the case of *CIT* v. *Subhash Trading Co.* [1996] 221 ITR 110/86 Taxman 30, has held as under (headnote) :

"Held, that a best judgment assessment had been made. While the assessee in its books of account disclosed the total sales to be Rs. 7,75,000, the Income-tax Officer on rejection of the books of account estimated the sales to be Rs. 8,75,000 which on appeal, the Tribunal reduced to Rs. 8,00,000. So also, while the gross profit disclosed by the books of account of the assessee was 5 per cent., the Income-tax Officer estimated the gross profit rate at 15 per cent which again was reduced by the Tribunal to 12 per cent. In this circumstance, in the absence of any other material which might reflect on the conduct of the assessee about a deliberate attempt to maintain false books of account, on a preponderance of probabilities, no other conclusion could be reached than that the failure to return the correct income was not on account of any fraud or gross or willful neglect on the part of the assessee. The Tribunal was right in holding that penalty of Rs. 92,894 imposed by the Inspecting Assistant Commissioner under section 271(1)(c) of the Act was not justified."

17. The Punjab and Haryana High court in the case of *Harigopal Singh* v. *CIT* [2002] 258 ITR 85/125 Taxman 242, has held as under (page 86) :

"In order to attract clause (c) of section 271(1) of the Act, it is necessary that there must be concealment by the assessee of the particulars of his income or if he furnishes inaccurate particulars of such income. What is to be seen is whether the assessee in the present case had concealed his income as held by the Assessing Officer and the Tribunal. He had not maintained any accounts and he filed his return of income on estimate basis. The Assessing Officer did not agree with the estimate of the assessee and brought his income to tax by increasing it to Rs. 2,07,500. This, too, was on estimate basis. The Tribunal agreed that the income of the assessee had to be assessed on an estimate of the turnover but was of the view that the estimate as made by the Assessing Officer was highly excessive and it fixed the total income of the assessee at Rs. 1,50,000 for the year under appeal. It is, thus, clear that there was a difference of opinion as regards the estimate of the income of the assessee. Since the Assessing Officer and the Tribunal adopted different estimates in assessing the income of the assessee, it cannot be said that the assessee had "concealed the particulars of his income" so as to attract clause (c) of section 271(1) of the Act. There is not even an iota of evidence on the record to show that the income of the assessee during the year under appeal was more than the income returned by him. Additions in his income were made, as already observed, on estimate basis and 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. There has to be a positive act of concealment on his part and the onus to prove this is on the Department. We are also of the considered view that the Tribunal grossly erred in law in relying on Explanation 1(B) to section 271(1)(c) of the Act to raise a presumption against the assessee. The assessee had justified his estimate of income on the basis of household expenditure and other investments made during the relevant period. It is not the case of the Revenue that he had, in fact, incurred expenditure in excess of what he had stated. In this view of the matter, it cannot be said that the explanation furnished by the assessee had not been substantiated or that he had failed to prove that such explanation was not bona fide."

18. The Madhya Pradesh High Court in the case of *CIT* v. *Shivnarayan Jamnalal & Co.* [1998] 232 ITR 311/[1996] 89 Taxman 420 held thus (page 313) :

"We have gone through the orders of the Tribunal and the Commissioner of Income-tax (Appeals). We are satisfied that both the authorities have correctly approached the matter and found that there was no fraudulent attempt on the part of the assessee. The assessee had placed before the authorities whatever books of account it had maintained-whether they were properly maintained or not but it has not withheld or concealed any material or made any deliberate attempt to defraud the authorities. The assessing authority has employed the flat rate for assessing the income of the assessee and on that basis, he has been taxed.

Therefore, we are of the opinion that the view taken by the Tribunal in setting aside the penalty appears to be justified and we answer both these questions against the Revenue and in favour of the assessee."

19. The Allahabad High Court in the case of *CIT* v. *Raj Bans Singh* [2005] 276 ITR 351 has held that "On appeal, the Tribunal came to the conclusion that it was a case of an estimate against an estimate and there was no concealment and accordingly it was held that no penalty was imposable".

20. This court in the case of *CIT* v. *Chaturbhuj Bhanwarlal* [1987] 166 ITR 659/31 Taxman 363 (Raj.) observed as under (page 682) :

"Having given our anxious consideration to the rival contentions advanced before us and to the law cited by both the sides, we are of the view that the Tribunal proceeded to take into account various circumstances referred to above and had reached the finding after considering those circumstances. It cannot be said that the finding reached by the Tribunal was based on no evidence. All material facts and circumstances positive and negative, constitute evidence and on consideration of the positive and negative circumstances, the finding can be arrived at after weighing the probabilities. Such a finding, in our opinion, cannot be said to be a finding which is vitiated on any count, i.e., such a finding cannot be said to be perverse or based on no evidence. It is true that this course was also open to the Tribunal and the Tribunal should have asked the assessee to submit his explanation with respect to capital accretion considered by the authorities below, but failure to do so by the Tribunal would not in any way affect the jurisdiction of the Tribunal to proceed to decide the appeal on the basis of the material on record. The finding of the Tribunal, therefore, cannot be said to be based on no evidence and the finding that there has been no concealment of income is a finding of fact and it does not raise any question of law and the Tribunal was right in cancelling the penalty imposed on the assessee."

21. The Delhi High Court in the case of *CIT* v. *Aero Traders (P.) Ltd.* [2010] 322 ITR 316 has held that penalty is not leviable when income was based on estimated profit and substantially reduced by the Tribunal.

22. The Punjab and Haryana High Court in the case of *CIT* v. *Modi Industrial Corpn.* [2010] 195 Taxman 68 has held that where the assessment of the assessee was completed on estimated basis penalty under section 271(1)(c) of the Act was not imposable with respect to the additions made on such estimate by the Assessing Officer.

23. The Chhattisgarh High Court in the case of *CIT* v. *Vijay Kumar Jain* [2010] 325 ITR 378/[2011] 10 taxmann.com 9/198 Taxman 156 (Mag.) has held that the assessee declared the net profit by estimating it at the rate of 6.36 per cent. of his gross receipt while it was estimated at the rate of 10 per cent of gross receipts by the Assessing Officer and on these facts held that penalty for concealment cannot be levied as the assessee cannot be said to have concealed any particulars of income or furnished any inaccurate particulars of income.

> **24.** In view of the above facts and what we have observed above, the finding reached by the Tribunal is essentially a finding of fact and no substantial question of law is involved in the present appeal. This appeal has no force and accordingly, the same is dismissed.

Since, there was no contrary view were presented before us by the ld. DR while arguing the appeal of the revenue and considering the discussion so recorded here in above do not find any merits in the solitary grounds so raised by the revenue and the same is dismissed.

In terms of these observations the appeal filed by the revenue stands dismissed.

Order pronounced in the open court on 27/06/2024.

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठोड कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 27/06/2024
*Ganesh Kumar, Sr. PS
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Income Tax Officer, Jaipur
2. प्रत्यर्थी / The Respondent- Shakuntlam Colonizers Pvt. Ltd., Jaipur
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 697/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar