

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICAL MEMBER &  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 326/Ahd/2024  
(निर्धारण वर्ष / Assessment Year : 2016-17)

<b>Shree Gunatit Jyot Mahila Trust</b> Post Box No.23, Pappaji Marg, Vallabh Vidhyanagar, Anand, Gujarat, 388120	<b>बनाम/ Vs.</b>	<b>ITO</b> Ward, Exemption Vadodara
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATS8722P		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri S. N. Soparkar, Sr. Advocate & Shri Parin Shah, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Smt. Mamta Singh, Sr. DR

<b>Date of Hearing</b>	31/07/2024
<b>Date of Pronouncement</b>	06/08/2024

**ORDER**

**PER SHRI NARENDRA PRASAD SINHA, AM:**

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’) dated 12.01.2024 for the Assessment Year 2016-17.

2. The brief facts of the case are that the assessee is a charitable trust registered under the Bombay Public Trust Act and

also registered under Section 12A of the Income Tax Act, 1961 (in short 'the Act'). The return of income for A.Y. 2016-17 was filed on 03.10.2016 declaring Nil income. In the course of assessment, the AO found that the assessee had received corpus donation of Rs.2,71,12,111/- for construction of building. Out of this amount, the Trust had utilized Rs.2,36,23,637/- for the purpose of construction of building. While filing the return of income, the assessee had claimed exemption for corpus donation under Section 11(1)(d) of the Act. It also claimed amount of building construction as income applied for the objects under Section 11(1) of the Act. The AO rejected the claim under Section 11(1) of the Act in respect of building construction amount of Rs.2,36,23,637/- on the ground that the expense was incurred out of corpus donation. However, there was no effect on the total income of the trust and the assessed income was computed at Rs. Nil. The AO had, however, initiated penalty proceeding under Section 271(1)(c) of the Act in respect of wrong claim of deduction under Section 11(1) of the Act in respect of building construction amount of Rs.2,36,23,637/-. A separate penalty order under Section 271(1)(c) of the Act dated 30.03.2019 was passed by the AO, after allowing an opportunity to the assessee and penalty of Rs.78,31,400/- was imposed @ 100% of tax sought to be evaded for furnishing inaccurate particulars of income.

3. Aggrieved with the penalty order of the AO, the assessee had filed an appeal before the First Appellate Authority, which was decided by the Ld. CIT(A) vide the impugned order. Penalty as imposed under Section 271(1)(c) of the Act was confirmed by the Ld. CIT(A) and the appeal of the assessee was dismissed.

4. Now, the assessee is in second appeal before us.

5. Following grounds of appeal have been taken in this appeal:

- “1. *The order passed by NFAC is bad in law and required to be quashed.*
2. *Ld. NFAC erred in law and on facts in confirming penalty of Rs. 78,31,400/- u/s 271(1)(c) of the Act under the limb furnishing of inaccurate particulars of income ignoring fact that full details are submitted in assessment proceedings regarding corpus donation.*
3. *Ld. NFAC erred in law and on facts failed to appreciate that appellant did not claim the expenditure in return of income and presentation it is error accordingly, it is not case of penalty.*
4. *Ld. NFAC ought to have considered fact that non acceptance of bona fide claim does not lead to furnishing inaccurate particulars of income which leads to penalty.*
5. *The order passed by lower authorities is required to be quashed as same is without recording proper satisfaction.”*

6. Shri S. N. Soparkar, Sr. Advocate appearing for the assessee fairly admitted that there was a mistake on the part of the assessee in the computation of income and deduction in respect of building construction of Rs.2,36,23,627/- was wrongly claimed as

application of income. He explained that the total amount of application of income as mentioned in the computation was Rs.4,21,52,867/-, which was restricted to the extent of “income before application of income”, which was Rs.1,75,11,224/- only. Thus, the deduction for application of income was actually claimed to the extent of 1,75,11,224/- only. The Ld. Senior Counsel submitted that even if the amount of building construction of Rs.2,36,23,632/- is excluded, the other amounts available towards application of income were sufficient to account for the entire admissible deduction of Rs.1,75,11,224/-. Thus, there was no escapement of income due to inadvertent claim of building construction amount towards application of income. The Ld. Senior Counsel further submitted that there was no variation in the total income as shown by the assessee and as computed by the AO in the assessment order. Therefore, the machinery provision for computation of tax sought to be evaded was not applicable in this case. The Ld. Senior Counsel also relied upon the decision of Hon’ble Gujarat High Court in the case of *CIT vs. Oshwal Education Trust*, [2014] 52 taxmann.com 332 (Gujarat) for his submission that no penalty can be levied due to bona-fide mistake of the assessee, which has no effect on the income of the assessee.

7. The Ld. Sr. DR, on the other hand, relied upon the orders of the lower authorities.

8. We have carefully considered the rival submissions. It is found from the computation of income that “income before application of income” was Rs.1,75,11,224/-. The assessee had deducted the following amounts towards application of income:

<i>(i) Amount applied U/s 11(1) (As per I/E A/c)</i>	<i>14859101</i>
<i>(ii) Building Construction</i>	<i>23623637</i>
<i>(iii) Furniture and Equipment</i>	<i><u>3670129</u></i>
	<i><u>42152867</u></i>

Thus, the total amount reduced towards application of income was Rs.4,21,52,867/-, which was restricted to the extent of “income before application” which was Rs.1,75,11,224/-. Even if we exclude the building construction amount of Rs.2,36,23,637/-, the remaining amount was still sufficient to claim the deduction under Section 11(1) of the Act to the extent of available “income before application”. Therefore, the wrong claim of building construction amount of Rs.2,36,23,637/- had no impact on the total income of the assessee. In fact, the AO had computed the income at Nil after allowing the deduction in respect of application of income to the extent of Rs.1,75,11,224/. It is also not the case of the Revenue that the unadjusted building construction amount of Rs.2,36,23,637/- was carried forward for adjustment with income in the future years. Therefore, the wrong claim of business construction amount towards application of income had no impact on the total income of the assessee either in the current year or in the future years. Under the circumstances, the machinery provision to work out the penalty amount @ 100% of tax sought to be evaded doesn't work out as

there was no evasion of income either in the current year or in future years. Therefore, the AO was not correct in imposing the penalty under Section 271(1)(c) of the act. The mistake on the part of the assessee was a bona-fide mistake, which ultimately had no impact on the taxable income of the assessee. Therefore, the penalty levied under Section 271(1)(c) of the Act is cancelled.

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

**This Order pronounced on 06/08/2024**

Sd/-  
(SUCHITRA KAMBLE)  
**JUDICIAL MEMBER**

Ahmedabad; Dated 06/08/2024

S. K. SINHA

*True Copy*

Sd/-  
(NARENDRA PRASAD SINHA)  
**ACCOUNTANT MEMBER**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad