

**THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH: AGRA**

**BEFORESHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

**ITA No.90/AGR/2023
Assessment Year: 2010-11**

Rameshth Construction Near Overbridge Parichha Jhansi 284003	Vs.	Income-Tax Officer, Agra
PAN :AAGFR7383B		
(Appellant)		(Respondent)

Assesseeby	Shri Sahib P. Satsangi, CA
Department by	Shri ShildndraShrivastava , Sr. DR

Date of hearing	15.01.2025
Date of pronouncement	12.02.2025

ORDER

PERSUDHIR KUMAR, JUDICIAL MEMBER:

The assessee preferred the captioned appeal, challenging the order dated 26.04.2023 passed by the Ld. Commissioner of Income Tax(Appeals) (“Ld. CIT(A) for short”)/National Faceless Appeal

Centre (NFAC) Delhi pertaining to penalty order for Assessment year 2010-11 and arises out of the penalty order dated 24.11.2017 passed under Sections 271(1)(c) of the Income Tax Act, 1961 (“The Act for short”).

2. The brief facts of the case are that the assessee is a partnership firm, engaged in the business of civil contract work in various departments. The assessee has e-filled his return of income on 14-10-2010 declaring total income at Rs 37,17,564/-. The assessment was completed u/s 143(3) of the Act at total income Rs 4751370/- on 31-12-2012. The case of assessee was reopened u/s 147 of the Act and notice u/s 148 of the Act was issued on 31-10-2014 and properly served to the assessee. The A.O has completed the assessment on 28-04-2015 after making the addition of Rs 4,08,802/- and penalty proceeding was also initiated against the assessee. Aggrieved from the order of the AO the assessee has filed the appeal before the Ld.CIT(A), who dismissed the appeal against which the assessee preferred the appeal before the Tribunal, and Tribunal vide order dated 02-03-2021 partly allowing the appeal, deleted the addition of

Rs.1,97,809/- on account of interest on FDR and matter was sent back for fresh adjudication. The AO passed the penalty order u/s 271(1)(c) of the Act levied the penalty of Rs 1,26,320/-.

3. Aggrieved the order of the AO, the assessee has filed the appeal before the Ld. CIT(A) who vide his order dated 26-04-2023 dismissed the appeal against which the assessee is in appeal before us on the following grounds;

1. *That having regard to facts and circumstances of the case the learned CIT(A) NFAC has erred both on facts and in law in dismissing the appeal and upholding the penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 of Rs. 1,26,320, without appreciating the order passed by the Honourable ITAT in the quantum appeal allowing relief to the appellant. The penalty imposed is liable to be deleted.*

2.*That having regard to facts and circumstances of the case the addition of interest on FDR Rs. 1,97,809 as income from other sources stands deleted by the Honourable ITAT and addition of Insurance claim Rs. 2,10,993 was set aside for fresh adjudication before the learned CIT(A) as per order of the Honourable ITAT dated 02.03.2021. The penalty of Rs. 1,26,203 under section 271(1)(c) of the Income Tax Act, 1961 worked out on these additions should have been deleted/reduced.*

3.That having regard to facts and circumstances of the case the addition/disallowance per se cannot mean that the appellant has concealed and/or furnished inaccurate particulars of income. Accordingly, penalty under section 271(1)(c) of the Income Tax Act, 1961 is not leviable.

4.That having regard to facts and circumstances of the case the learned CIT(A) NFAC has erred both on facts and in law in ignoring that the penalty under section 271(1)(c) of the Income Tax Act, 1961 was imposed for twin charges of concealment and furnishing inaccurate particulars of income whereas per the assessment order dated 28.04.2015 this penalty was initiated for single charge of concealment of income.

5.That having regard to facts and circumstances of the case the order passed by learned CIT(A) NFAC dated 26.04.2023 upholding the penalty under section 271(1)(c) of the Income Tax Act, 1961 without considering the submissions filed is bad in law.

6.That the appellant craves the leave to add, amend, modify, delete any grounds of appeal before or at the time of hearing and all the above grounds are without prejudice to each other.

4. The ld. AR has submitted that the additions made in the assessment order on which basis the penalty levied, was set aside by the Tribunal. The assessee has not concealed any income and disclosed all the

income in schedule no 13 (paper book page no 58) before the AO. Where the assessment order was set aside, on that basis penalty cannot be levied. The reliance placed in the case of **Shri T. Ashok pai v. CIT [2007]292 ITR 11 (SC)** in this the Hon'ble court held that

“22. Concealment of income and furnishing of inaccurate particulars carry different connotations. Concealment refers to deliberate act on the part of the assessee. A mere omission or negligence would not constitute a deliberate act of suppression veri or suggestion falsi.

Dilip N shroff V, JCIT 291 ITR 519 (SC) the Hon'ble court held that

43. The expression “Conceal” is of great importance. According to law Lexicon , the word ‘Conceal means : ‘to hide or keep secret. The word “conceal” is con+celare which implies to hide. It means to hide or withdraw from observation; to cover or keep from sight; to prevent the discovery of; to withhold knowledge of. The offence of concealment is, thus a direct attempt to hide an item of income or a portion thereof from the knowledge of the income tax authorities.”

In Webster’s Dictionary “inaccurate” has been defined as : “not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy of transcript.”

44. 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.”

In the case of Commissioner of Income -Tax vs Bengal jute Mills Co. Ltd, [1988] 174 ITR 402 “where penalty was imposed solely on the basis of an addition of Rs 4 lakhs to the assessee’s total income and addition was deleted by the Tribunal.

Held,” that it was evident from the material on record that the penalty had been imposed solely on the basis of the addition of Rs 4 lakh to the assessee’s income. If the addition was deleted the charge of concealment of income could not be sustained. Imposition of penalty under section 271(1)(c) of the Income-tax Act 1961 was, therefore,not valid.”

5. The Learned DR has supported the order of the lower authorities.
6. We have heard rival submissions of both the parties and examined the relevant material available on record.
7. In the present case the assessee has not concealed the particulars of income and disclosed the particulars in schedule no 13 (paper book page no 58) before the AO. As we observed that the assessee has

disclosed both the interest income of Rs.197809/- and insurance claim of Rs.2,10,993/-in the computation of income filed with department alongwith return of income and hence, both the aforementioned issue have suffered taxation as per documents produced before us. The penalty can be levied u/s. 271(1)(c) against the assessee if he has concealed the particulars of his income or furnished inaccurate particulars of such income. Therefore, the appeal of the assessee is liable to be allowed and the penalty levied against the assessee is liable to be deleted and deleted accordingly.

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

Order pronounced in the open court on 12/02/2025.

Sd/-

**(RAMIT KOCHAR)
ACCOUNTANT MEMBER**

Dated: 12 February,2025.

“Neha, Sr. PS”

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

**(SUDHIR KUMAR)
JUDICIALMEMBER**

Asst. Registrar, ITAT, Agra