

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.598/Nag./2024**  
(Assessment Year : 2009-10)

Bhaktvatsal Sadguru Yogiraj Vasantrya  
Gopalrao Ghonge Maharaj Trust  
Mukteshwari, 25, Gharpure Layout  
Opp. Rashtra B.P. Sindi Meghe  
Wardha 442 001 PAN – AABTB2675F

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Circle-1(1), Nagpur

..... Respondent

Assessee by : None  
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 06/02/2025

Date of Order – 04/03/2025

**ORDER**

**PER V. DURGA RAO, J.M.**

This appeal by the assessee is against the impugned order dated 27/09/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2009-10.

2. In its appeal, the assessee has raised following grounds:-

*“1. Assessee is a registered trust under Section 12A of the I.T. Act, 1961 and also under the Public Trust Act.*

*2. In assessment order, addition is made by denying the exemption u/s 11 of the Act and disallowing the expenses towards the object of the trust.*

3. *The Hon'ble ITAT, Nagpur Bench, Nagpur, vide their order in ITA NO. 36 to 40, 151-152/Nag/2017 dated 28.06.2022 has quashed the order passed by CIT u/s 263 of the Act wherein the expenses claimed by the appellant towards the object of the trust amounting to Rs. 20,47,792/- was disallowed and resultantly allowed the appeal of the appellant. (141 taxmann.com 100 (Nagpur Trib.)/[2022] 197 ITD 224 (Nagpur Trib.) [28-06-2022])*

4. *Copy of order is attached for your reference.*

5. *On the above ground, H'ble Commissioner of Income Tax (Appeals) has rightly deleted penalty order of Rs. 6,32,768 on 14/11/2024 passed by AO for A.Y. 2010-11. The copy of order is also enclosed for your kind attention.*

6. *So we request you to kindly admit our appeal and grant us relief from burden of penalty.*

7. *It was unforeseen for us that Appeal order was passed with confirming penalty under Section 271 (1) (c) for the amount of addition which is already deleted by higher Authority i.e. H'ble ITAT, Nagpur bench.*

8. *Basically the penalty order passed on 28.03.2018 is void ab intio because at the time of passing order, the matter was already under consideration at ITAT, Nagpur bench. Hence when the matter is pending at H'ble ITAT, what was the hurry to pass the order by levying penalty under section 271(1)(C).*

9. *When there is no any addition of income, question of penalty under section 271 (1) (c) does not arise."*

3. When the case was called for hearing, none appeared on behalf of the assessee. Even there is no adjournment application either. However, the Bench is of the view that the appeal filed by the assessee can be disposed off qua the assessee and after hearing the learned Departmental Representative and on the basis of material available on record.

4. The facts, as culled out from the impugned order passed by the learned CIT(A) are that\* a search operation under section 132 of the Income Tax Act, 1961 ("*the Act*") at the residential premises of Shri Vasantryao Ghonge. During the search, various incrimination documents were found and seized. Assessment in this case was completed under section 143(3) r/w section 153C of the Act on 18/03/2013 on the assessed income at ₹ 3,64,340. The

Assessing Officer observed that from the incriminating documents found and information gathered that the trust was formed to get tax benefit on the huge amounts of receipts in the form of donation etc. The trust was not maintaining books of account as no books were found during search operation. The Assessing Officer denied the claim under section 11 of the Act since all the receipts were attributed to Shri Vasantrao Ghonge, and added his income on substantive basis in the hands of individual and on protective basis in the hands of the assessee trust. Thereafter, the learned CIT (Central), passed an order under section 263 of the Act dated 17/03/2015 holding the assessment order passed under section 143(3) r/w section 153C of the Act dated 18/03/2013 as erroneous and prejudicial to the interests of Revenue, since the Assessing Officer even after denying exemption under section 11 of the Act allowed the expenses made towards the object of the trust and failed to compute the taxable income as per chapter IV (Section 28-44) of the IT Act. Further, the Assessing Officer finalized the assessment order under section 143(3) r/w section 263 of the Act thereby disallowing the expenses amounting to ₹ 15,92,565, claimed towards the object of the trust as exemption under section 11 had been denied. Penalty proceedings u/s 271(1)(c) were initiated and a show cause notice was issued and served on the assessee. Thereafter, the learned CIT(A) upheld the action of the Assessing Officer in denying the exemption under section 11 of the Act and disallowing the expenses towards the object of the assessee trust. Therefore, the assessee was given one more opportunity by issuing show cause notice asking it to submit their explanation/reply as to why penalty under section 271(1)(c) should not be levied. But neither the assessee attended nor filed

any explanation in support of their claim. Since the assessee trust failed to offer any valid explanation/reasonable cause during the penalty proceedings, the Assessing Officer imposed penalty of ₹ 5,28,810 under section 271(1)(c) of the Act as the assessee furnished inaccurate particulars of its income.

5. When the matter came up before the learned CIT(A) during the second round of appeal on the issue of penalty levied under section 271(1)(c) of the Act by the Assessing Officer, the learned CIT(A) confirmed the penalty order passed under section 271(1)(c) of the Act levying penalty of ₹ 5,28,810. While dismissing the appeal of the assessee, the learned CIT(A) observed as under:-

"5. ....

*In ground no.1 & 2, the appellant had stated that the AO was wrong and unjustified in treating the expenditure as claimed by it as concealed income though the same were supported by audited income and expenditure account. During the course of appellate proceedings, the appellant had not filed any written submission or furnished any documentary evidences in support of its claim. A search and seizure operation was carried out in the case of the appellant trust during which several incriminating documents were found consequent to which assessment was completed u/s 143(3) r.w.s 153C of the Act whereby, the exemption U/s 11 of the Act claimed by the appellant was denied and expenses incurred towards the object of the trust was disallowed. Resultantly proceedings u/s 271(1)(c) of the Act were initiated. The Ld. CIT Appeal upheld the order of the AO. Thereafter, notices u/s 271(1)(c) of the Act were issued but the appellant failed to offer any explanation in support of its claim. Therefore, the AO imposed penalty of Rs. 5,28,810/- u/s 271(1)(c) of the Act. Further during the course of appellate proceedings, several notices were issued from time to time as given above but the appellant failed to offer any explanation or submit any evidences in support of the penalty u/s 271(1)(c) of the Act imposed against it. Therefore, the grounds taken by it are not tenable and thus dismissed."*

6. Now, before us, the assessee, though was absent during the hearing, came up with the issue of levy of penalty under section 271(1)(c) of the Act.

As could be seen above, the learned CIT(A) dismissed the appeal of the assessee by upholding the penalty order passed by the Assessing Officer:-

7. We find that for the assessment year 2010-11, the learned CIT(A), vide his impugned order dated 14/11/2024, held as under:-

"5.2 .....

*In this case, the appellant was aggrieved by the decision of the order of the Ld. CIT (Appeal) who upheld the order of the Ld. CIT Central passed u/s 143(3) r.w.s 263 of the Act and therefore, it filed a second appeal before the Hon'ble ITAT, Nagpur Bench, Nagpur. Further, the Hon'ble ITAT, Nagpur Bench, Nagpur, vide their order in ITA NO. 152/Nag/2017 dated 28.06.2022 has quashed the order passed by CIT u/s 263 of the Act wherein the expenses claimed by the appellant towards the object of the trust amounting to Rs. 20,47,792/- was disallowed and resultantly allowed the appeal of the appellant. Therefore, the penalty proceedings initiated u/s 271(1)(c) of the Act and penalty imposed of Rs. 6,32,768/- against it does not sustain anymore, and hence, the same is deleted."*

8. We find that the assessee claimed certain expenses which were disallowed by the Assessing Officer, consequently, the penalty was levied by the Assessing Officer under section 271(1)(c) of the Act. We have gone through the entire facts of the case and orders of the authorities below and find that the expenses claimed by the assessee was disallowed by the Assessing Officer which neither falls under the realm of concealment of income nor filing of inaccurate particulars of income and hence under these facts and circumstances, penalty cannot be levied under section 271(1)(c) of the Act. Consequently, we hereby cancel the levy of penalty imposed by the Assessing Officer and confirmed by the learned CIT(A). Accordingly, grounds raised by the assessee are allowed.

9. In the result, assessee's appeal stands allowed

Order pronounced in the open Court on 04/03/2025

**Sd/-  
K.M. ROY  
ACCOUNTANT MEMBER**

**Sd/-  
V. DURGA RAO  
JUDICIAL MEMBER**

**NAGPUR, DATED: 04/03/2025**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur