

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

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. No. 1274/SRT/2024
(Assessment Year: 2008-09)

Hetal Ramanlal Shah, 44-A, Suryapur Society, Opp. Jain Temple, Rander Road, Surat-395002	Vs.	Income Tax Officer, Ward-1(2)(2), Surat Current Jurisdiction Income Tax Officer, Ward-1(2)(1), Surat
[PAN No. AFSPS3691C]		
(Appellant)	..	(Respondent)

Appellant by :	Ms. Dalzin Madan, C.A.
Respondent by:	Shri Mukesh Jain, Sr. DR

Date of Hearing	26.03.2025
Date of Pronouncement	09.04.2025

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 06.09.2023 passed for A.Y. 2008-09.

2. The assessee has raised the following grounds of appeal:

“1. On the facts and in circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing ex-parte order without giving reasonable and sufficient opportunity of being heard.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in dismissing the appeal without passing speaking order.

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3. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in levying penalty of Rs. 11,35,434/- u/s. 271(1)(c) of the I.T. Act, 1961.*

4. *It is therefore prayed that penalty levied by the assessing officer and confirmed by CIT(A) may please be deleted.*

5. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

3. The brief facts of the case are that the assessee is an individual and for the impugned year under consideration the assessee filed return of income declaring total income of Rs. 1,49,160/-. Assessment under Section 143(3) of the Act was completed, determining total income at Rs. 35,33,360/- after disallowance of Rs. 18,27,989/- under Section 40A(3)(a) of the Act and Rs. 15,45,212/- on account of disallowance under Section 40A(3)(b) of the Act. Penalty proceedings under Section 271(1)(c) of the Act were also initiated against the assessee, for concealment of income.

4. Aggrieved by the assessment order, the assessee filed appeal before Ld. CIT(A) wherein the appeal filed by the assessee was dismissed by Ld. CIT(A), vide order dated 09.05.2014. Consequently, the Assessing Officer levied penalty of Rs. 11,35,434/- on the assessee for willfully furnishing inaccurate particulars of income. In appeal against the penalty order, Ld. CIT(A) dismissed the appeal of the assessee with the following observations:

“So, by respectfully following the view taken in the cases cited supra, I dismiss the appeal in limine for non-pursuation.

6.2 *The appeal is not maintainable on merit too. It has been observed by the assessing officer in the assessment order as well the penalty order that the assessee has manipulated ledgers of labour parties in original submission and in submission in response to show cause. In case of weaving job work labour expense parties namely*

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*M/s. Chrnni Fashions, M/s. Gandhi Traders, M/s. Heena Weaving Works, Raj Synthetics, Gokani Industries, Nandan weaving Works, S.S. Fabrics, M/s. Suchitra Weaving Works and in the case of purchase parties namely M/s. Vaibhav Prints United Industries, submission given by Assessee was found fake, manipulated and misleading. In case of creditors also the AO observed that the Assessee submitted altered accounts as compared to accounts submitted originally. No attempt was made by the appellant to rubut the allegations either during the assessment proceedings or in appeal in spite of repeated opportunities offered. In view of the above discussion I am satisfied that the Assessing Officer has acted correctly in imposing the penalty u/s 271(1)(c) on account of furnishing inaccurate particulars of income and confirm the order. **Grounds No 1 to 3 are, therefore, dismissed.***

7. *In the result, the appeal is **Dismissed.***”

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A) upholding the levy of penalty made by the Assessing Officer under Section 271(1)(c) of the Act. Before us, the Counsel for the assessee submitted that in the appeal filed by the assessee against the quantum additions confirmed by the Ld. CIT(A), the ITAT Surat in ITA No. 2188/Ahd/2014 vide order dated 30.04.2019 partly allowed the appeal of the assessee and directed the disallowance to be restricted to 8% of the turnover. Accordingly, the Counsel for the assessee submitted that once the additions have been confirmed / restricted in the hands of the assessee on estimation basis, in view of various judicial precedents on the subject, penalty under Section 271(1)(c) of the Act is not liable to be levied on the assessee.

6. In response, Ld. D.R. placed reliance on the observations made by the Ld. CIT(A) in his appellate order.

7. We have heard the rival contentions and perused the material on record.

8. Before proceedings with the matter, it would be useful to reproduce the relevant extracts of the order passed by ITAT Surat in assessee's own case for A.Y. 2008-09, wherein the quantum of disallowance was restricted by Tribunal on estimated basis:

*“...On careful consideration of facts, and having regard with nature of payments and peculiar circumstances, we are of the opinion that it would be interest of natural justice, judicial pronouncements discussed and cited above by the learned counsel for the assessee and **considering the turnover is below Rs. 40 lakhs, the disallowance of all payments be restricted to 8% of total turnover.** The AO is directed to recalculate the disallowance in respect of disallowance of Rs.18,27,989/- made under section 40A(3)(a) and disallowance of Rs.15,45,212/- under section 40A(3)(b) of the Act totaling to Rs.33,73,201/-. These grounds of appeal are therefore, partly allowed.*

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

9. On going through the observations made by ITAT, it is observed that while restricting the disallowance, the additions have been partly confirmed in the hands of the assessee on estimated basis i.e. disallowance of payments have been directed to be restricted to 8% of the total turnover.

10. It is a well settled principle of law that once additions have been made in the hands of the assessee on estimated basis, then there is no question of levy of penalty under Section 271(1)(c) of the Act.

11. In the case of **Commissioner of Income-tax vs. Whitelene Chemicals [2013] 32 taxmann.com 192 (Gujarat)/[2013] 214 Taxman 93 (Gujarat) (Mag.)/[2014] 360 ITR 385 (Gujarat)[15-01-2013]**, the Gujarat High Court held that penalty under Section 271(1)(c) could not be imposed merely because books of account maintained by assessee were rejected and its profit was estimated on basis of fair gross profit ratio.

12. In the case of **Income-tax Officer vs. Bombaywala Readymade Stores [2015] 55 taxmann.com 258 (Gujarat)/[2015] 230 Taxman 313 (Gujarat)[03-11-2014]**, the Gujarat High Court held that where no return had been filed by assessee and income was assessed on estimate basis by revenue, no penalty could be levied for concealment of income.

13. In the case of **Anil Abhubhai Odedara vs. Income Tax Officer, Ward-3(1) [2020] 117 taxmann.com 490 (Rajkot - Trib.)/[2020] 183 ITD 313 (Rajkot - Trib.)[29-06-2020]** the ITAT held that when income of assessee is determined on estimate basis then no penalty under Section 271(1)(c) can be imposed for concealment and furnishing of inaccurate particulars of income.

14. In the case of **Income-tax Officer vs. Sunil Bhagwandas Vorani (HUF) [2024] 169 taxmann.com 23 (Mumbai-Trib.)[22-07-2024]**, the ITAT held that penalty u/s. 271(1)(c) is not attracted where addition is made on estimate basis.

15. In the case of **AKM Resorts vs. ACIT [2025] 171 taxmann.com 685 (Chandigarh-Trib.)[13-02-2025]**, the ITAT held that where additions to assessee's income were made by Assessing Officer based on application of estimated rate of NP on gross receipts following rejection of books of account, penalty could not be sustained under section 271(1)(c) of the Act.

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16. Respectfully following the aforesaid decisions and in light of the facts in the instant case, wherein the additions have been partly confirmed in the hands of the assessee on estimation basis by ITAT Surat in assessee's own case in quantum proceedings, in our considered view, no penalty is leviable under Section 271(1)(c) of the Act for concealment of income.

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

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 09/04/2025

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Ahmedabad; Dated 09/04/2025

TANMAY, Sr. PS

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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, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat