

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

**BEFORE :SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

ITA No.215/Agr/2024
Assessment Year: 2006-07

Poonam Gupta, 61 Laxmi Bai Colony, Gwalior.	Vs.	ACIT, Circle 1(1), Gwalior
PAN :ACOPG5442Q		
(Appellant)		(Respondent)

Assessee by	Sh. Anurag Sinha, Advocate
Department by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	27.03.2025
Date of pronouncement	24.04.2025

ORDER

Per Annapurna Gupta, Accountant Member:

The present appeal has been filed by the assessee against the order passed by the learned Commissioner of Income-tax (Appeals)-3, Bhopal [in short "CIT(A)"] u/s. 250(6) of the Income-tax Act, 1961 (hereinafter referred to as "the Act").

2. The facts relevant to the case are that consequent to a search action conducted on the assessee u/s. 132(1) of the Act on 28.03.2018, assessment was framed u/s. 143(3) r.w.s. 153A wherein addition of Rs.70,14,083/- and Rs.88,000/- was made. In first appeal before the Id.

CIT(Appeals) both the additions were deleted. The matter was carried before the ITAT who vide order dated 17.07.2013 confirmed the addition of Rs.70,14,083/- and upheld the deletion of addition of Rs.88,000/-. The Assessing Officer accordingly levied penalty on the assessee for furnishing inaccurate particulars of her income to the extent of the addition confirmed by ITAT of Rs.70,14,083/- u/s. 271(1)(c) amounting to Rs.23,60,940/-, which was confirmed by the Id. CIT(Appeals).

3. Before us, though several grounds of appeal have been raised, the solitary contention of the Id. Counsel for the assessee was that the order passed by the ITAT, confirming the addition of Rs.70,14,083/- has been challenged before Hon'ble M.P. High Court, Gwalior Bench and the appeal has been admitted by the Hon'ble Court framing the substantial question of law as under :

“The appeal appears to be arguable and, therefore, is admitted for final hearing on the following substantial questions of law :-

1. Whether under the facts and circumstances of the case and in law, the order passed by the Ld. CIT (A) deleting the addition of Rs. 70,14,083 / on the ground of being not based on any incriminating material found during the course of search and. therefore, beyond the scope of the proceedings u/s 153A, has not attained finality?

2. Whether under the facts and circumstances of the case and in law the Tribunal has not acted perversely in reversing the order passed by Ld. CIT (A) on the ground that the bank statement has not been produced by the assessee-appellant?

3. Whether under the facts and circumstances of the case the burden casted on the Assessee under Section 68 of the Act with respect to the amount received from the share broker M/s Deepak Securities has not been duly discharged by the Appellant?

List the case for final hearing.”

4. Learned counsel for the assessee contended that the appeal is still pending before the Hon'ble High Court and to this effect he filed evidence by way of certificate from the representing counsel enclosing therewith the status report of the Hon'ble M.P. High Court from website. Ld. Counsel for the assessee contended that since Hon'ble High court has found it fit to admit assessee's appeal, it is evident that the addition made in the hands of the assessee was debatable and therefore, there was no case for levy of any penalty u/s. 271(1)(c) of the Act. Reliance was placed on the following decisions :

- (i) CIT vs. Nayan Builders & Developers (2015) 56 taxmann.com 335 (Bombay HC)
- (ii) PCIT vs. M/s. Harsh International Pvt. Ltd. (2021) 431 ITR 118 (Del)
- (iii) CIT vs. Liquid Investment & Trading Co. 2010(10) TMI 1021-Delhi High Court.
- (iv) PCIT vs. Dhariwal Industries Ltd. (2018) 408 ITR 102 (Bom)
- (v) CIT vs. M/s. Advaita Estate Development Pvt. Ltd. 2017(3) TMI 269-Bombay High Court
- (vi) CIT vs. M/s. Aditya Birla Power Co. Ltd. 2016(1) TMI 136- Bombay High Court.
- (vii) DCIT vs. Bombay Rayon Holdings Ltd. 2025(3) TMI 30 –ITAT, Mumbai
- (viii) CIT vs. Noida Power Company Ltd., Noida 2016(9) TMI 1490- ITAT Delhi
- (ix) ACIT vs. Shri Pawan Kumar Malhotra 2016(6) TMI 797- ITAT Delhi.

5. Learned DR, though was unable to point out any infirmity in the proposition of law canvassed by the Id. Counsel for the assessee, however, heavily supported the order of Id. CIT(Appeals).

6. Having heard the contentions of both the parties, we find merit in the contention of the Id. Counsel for the assessee that it is not a fit case for levy of penalty u/s. 271(1)(c) of the Act. Undisputedly, the penalty has been levied on an addition of Rs.70,14,083/- made in the case of the assessee, which stood confirmed by the ITAT. It is also not disputed that this addition has been challenged by the assessee before the aforesaid High Court of M.P. wherein appeal of the assessee has been admitted. Considering the question of law framed by Hon'ble High Court as reproduced above, it is evident that the addition confirmed by the ITAT is taken up for consideration by the High Court and therefore, it is evident that the addition has been made on a debatable issue. The decisions relied upon by the Id. Counsel for the assessee heavily support its contention that where the High Court has admitted substantial question of law on issue of quantum proceedings, on the basis of which penalty was levied, it shows that the concealment is not final and the issue is debatable. Therefore, there is no case for levy of penalty. In the light of the same, we hold that the penalty levied in the

present case being on a debatable issue, is not sustainable and we direct the deletion of the same.

7. Appeal of the assessee is allowed in above terms.

Order pronounced in the open court on 24.04.2025.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Dated: 24.04.2025

*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra