

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.629/SRT/2024

Assessment Year: (2015-16)

(Physical hearing)

Ashish Jayantilal Pandya G/25, Shubhlaxmi Complex, Near Agresan Bhavan, City Light Road, Surat-395 001	Vs.	The ITO, Ward - 1(3)(1), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAVPP8182D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी /Respondent)

Appellant by	Shri Rasesh Shah, CA
Respondent by	Shri Mukesh Jain, Sr. DR
Date of Hearing	10/03/2025
Date of Pronouncement	30/04/2025

आदेश / O R D E R

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 28.03.2024 by the National Faceless Appeal Centre, Delhi /Commissioner of Income-tax (Appeals) [in short 'Ld. CIT(A)'] for the Assessment Year (AY) 2015-16, which in turn arises out of the penalty order passed by Assessing Officer (in short, 'AO') u/s 271(1)(c) the Act, dated 18.01.2019.

2. Grounds of appeal raised by the assessee are as under:

"1. On the facts and circumstances of the case as well as the law, the Learned CIT(a) has erred in confirming the actions of the Assessing Officer in levying the penalty of Rs.23,26,538 u/s 271(1)(c) of the Act.

2. It is therefore prayed that above penalty levied by the Assessing Officer and confirmed by CIT(A) may please be deleted.

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

3. Facts of the case in brief are that the assessment order u/s 143(3) of the Act was passed by the AO on 30.11.2017 by making addition of Rs.77,84,695/-. Total income was assessed at Rs.81,41,520/- as against returned income of Rs.3,56,820/-. The AO had also initiated penalty proceedings u/s 271(1)(c) of the Act for concealment of particulars of income. The assessee filed appeal before CIT(A) against the order of AO, which was dismissed by the CIT(A). Thereafter, the AO passed order u/s 271(1)(c) on 18.01.2019 wherein penalty of Rs.23,27,000/- was levied u/s 271(1)(c) of the Act. The appellant filed appeal before the CIT(A) who issued various notices as mentioned para 3 of the appellate order. The appellant filed written submission which has been considered by the CIT(A). However, he was not satisfied with the reply of the assessee and confirmed the order of AO and dismissed the appeal.

4. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. At the outset, the learned Authorized Representative (Id. AR) of the assessee submitted that the quantum appeal against the order of CIT(A) has been restored to the file of the CIT(A) by the ITAT, in ITA No.705/SRT/2018, dated 13.07.2021. In the said order, it was observed that

the order of CIT(A) was an *ex parte* order and it was not in accordance with the provisions of section 250(6) of the Act. He, therefore, argued that the penalty order is not sustainable.

5. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) submitted that the Bench may decide the appeal as it deems fit.

6. We have heard both the parties and perused the materials available on record. The AO has levied the penalty by observing that the CIT(A) has confirmed the addition made in the assessment order. The CIT(A) also confirmed the penalty order passed by AO u/s 271(1)(c) of the Act by observing that appeal of the assessee against the quantum addition has been disposed of by the CIT(A), confirming the quantum addition. The Id. AR filed copy of the ITAT order, dated 13.07.2021 (*supra*), where the order of CIT(A) has been set aside and restored to the file of CIT(A) for fresh adjudication after hearing the assessee. Since the matter has been restored to CIT(A) for fresh adjudication, there is no basis for confirming the impugned order of CIT(A). If the order of AO u/s 143(3) is upheld by CIT(A) in the fresh adjudication, the AO may initiate proceedings u/s 271(1)(c) of the Act during the fresh assessment proceedings, if required conditions are fulfilled. Accordingly, we set aside the order of CIT(A). Hence, the ground is allowed for statistical purposes.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 30/04/2025.

Sd/-
Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 30/04/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat