

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH, AHMEDABAD**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA Nos.1967, 1968 & 1969/Ahd/2024
Assessment Years: 2011-12, 2012-13 & 2013-14**

Shashi Jivanlal Patel, C/o. Vikas Vegetable, Shop No.3, Simandhar Tower, Bodakdev, Opp. Parijat, Ahmedabad – 380 054. [PAN – ARRPP 9539 M] (Appellant)	Vs.	Income Tax Officer, Ward – 1(2)(2), Aaykar Bhavan, Race Course, Vadodara – 390 007. (Gujarat) (Respondent)
Assessee by	Shri Hemant Suthar, AR	
Revenue by	Shri B.P. Srivastava, Sr. DR	
Date of Hearing	01.05.2025	
Date of Pronouncement	19.05.2025	

ORDER

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

These three appeals are filed by the assessee against the orders of National Faceless Appeal Centre (in short ‘the CIT(A)’), all dated 26.07.2024, for the Assessment Years (A.Y.) 2011-12, 2012-13 & 2013-14 in respect of penalty order under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter ‘the Act’).

2. There was delay of 51 days in filing these appeals. The assessee has filed an affidavit explaining the reasons for delay. It was submitted that the assessee is a Senior Citizen and his son had met with an accident

and suffered fracture which required prolonged hospitalisation and surgery. Due to this fact, he could not verify the Income Tax Portal which led to the delay in filing these appeals. Considering the explanation of the assessee, the delay in filing these three appeals is condoned.

3. As the facts involved in these three appeals are identical, all these matters were heard together and are being disposed of vide this common order for the same of convenience.

4. We will take ITA No.1967/Ahd/2024 for the A.Y. 2011-12 as the lead case.

ITA No.1967/Ahd/2024 for A.Y. 2011-12

5. The brief facts of the case are that the assessee did not file his return of income for the A.Y. 2011-12. The case was reopened under section 147 of the Act by issue of notice under section 148 of the Act dated 15.07.2013. In response thereto, the assessee had filed his return of income on 19.08.2013 declaring total income of Rs.520/-. In the course of assessment, the Assessing Officer found that the assessee had made cash deposits in his four bank accounts which was explained to be on account of receipts from civil work. Further, there were credits through cheques/transfer entry in the bank account which were explained to be on account of intraday share transactions done by the assessee. However, the Assessing Officer was not convinced with the explanation of the assessee and the entire deposits in the bank accounts by way of cash as well as through cheque/transfers was considered as income of the assessee and accordingly addition of Rs.47,42,664/- was made to the income of the assessee. The Assessing Officer had also initiated penalty proceeding under section 271(1)(c) of the Act. Thereafter, a separate

penalty order under section 271(1)(c) of the Act dated 27.03.2018 was passed imposing penalty of Rs.9,27,896/- on the assessee.

6. Aggrieved with the penalty order of the Assessing Officer, the assessee had filed an appeal before the First Appellate Authority which was decided by the CIT(A) vide the impugned order and the appeal of the assessee was dismissed.

7. Now the assessee is in second appeal before us. The following grounds have been taken in this appeal: -

- “1. *The Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi has erred in law and in facts in confirming the action of the Ld. A.O. in the levy of penalty u/s. 271(1)(c) of Rs.9,27,896, on the ground that the appellant has furnished inaccurate particulars of income to the extent of Rs.36,06,319/-, without considering the submissions of the appellant. The levy of penalty u/s. 271(1)(c) of Rs.9,27,896/-being bad in law and in facts is prayed to be deleted.*
2. *The Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi has erred in law and in ignoring the facts that the Ld. A.O. has levied the penalty of Rs.9,27,896/-, considering that the appellant has furnished inaccurate particulars of income to the extent of Rs.36,06,319/-as against total income restricted to NIL by Ld. CIT(A) as per order dated 29.03.2016.*
3. *Your appellant craves liberty to add, alter, amend, substitute or withdraw any of the ground(s) of appeal hereinabove contended.”*

8. The assessee has also taken an additional ground which is as under: -

“The Ld. A.O. has erred in law and in facts in proposing the levying of penalty u/s. 274, without specifying the charge for which the penalty is proposed as to for concealment of income or for furnishing inaccurate particulars. Moreover, Ld. A.O. has not mentioned the charge in the assessment order, wherein it is simply mentioned that the penalty proceedings are initiated separately. The levy of penalty in the aforesaid manner, in the humble opinion of the appellant, being bad in law, deserves to be cancelled.”

9. Shri Hemant Suthar, Ld. AR of the assessee explained that in the appeal against quantum addition, the Ld. CIT(A) had reduced the addition of Rs.47,42,664/- as made by the Assessing Officer to Rs.36,06,799/- on the basis of peak credit of Rs.32,79,679/- and unexplained deposit of Rs.3,26,120/-. Further, the Ld. CIT(A) had directed to allow set off of this income with the loss of Rs.38,63,192/- incurred by the assessee during the year in share trading transactions. Thus, the net income of the assessee, as per the order of the Ld. CIT(A), had resulted into loss of Rs.2,57,393/-. Considering this fact, the Assessing Officer was not correct in imposing the penalty under section 271(1)(c) of the Act on the profit amount of Rs.36,06,319/- without considering the loss of Rs.38,63,192/- as allowed by the Ld. CIT(A). The Ld. AR further submitted that the Assessing Officer had not mentioned, while initiating the penalty proceeding, as to whether the penalty was leviable for concealment of income or for furnishing of inaccurate particulars of income, either in the assessment order or in the penalty notice.

10. Per contra, Shri B.P. Srivastava, Ld. Sr. DR supported the orders of the lower authorities.

11. We have carefully considered the rival submissions. A copy of the order giving effect to CIT(A)'s order dated 22.08.2016 in respect of quantum addition has been brought on record by the assessee in the paper book. It is found that the income of the assessee, pursuant to order of the CIT(A), was recomputed as under:-

"Total income as per order u/s.143(3) r.w.s. 147

dated 29.01.2015

Rs.47,43,184/-

Less: Relief/reduction allowed by the CIT(A)

1. Unexplained bank deposits

Rs.47,42,664/-

Rs. 520/-

Add: Disallowances as per Id. CIT(A)

1. Unexplained deposits by cheques	Rs.3,26,120/-	
2. Unexplained deposits in cash (being the peak amount)	<u>Rs.32,79,679/-</u>	<u>Rs.36,05,799/-</u>
		Rs.36,06,319/-

Less: Business loss non-speculative to the extent of income available		<u>Rs.36,06,319/-</u>
Revised total income		Rs. Nil"

12. It is thus found that the Assessing Officer has revised the total income of the assessee at Rs. Nil pursuant to the order of the Ld. CIT(A). Thus, when the income of the assessee was computed at Rs. Nil, the Assessing Officer was not correct in levying penalty under section 271(1)(c) of the Act in respect of concealment of Rs.36,06,319/-. No penalty under Section 271(1)(c) of the Act could have been levied either for concealment of income or for furnishing of inaccurate particulars of income, when the income of the assessee for the current year was recomputed by the Assessing Officer at Rs. Nil. In view of this fact, penalty of Rs.9,27,896/- as levied by the Assessing Officer under section 271(1)(c) of the Act cannot be sustained. Accordingly, the penalty imposed by the Assessing Officer is deleted.

13. In the result, the appeal of the assessee in ITA No.1967/Ahd/2024 for the A.Y. 2011-12 is allowed.

ITA Nos.1968 & 1969/Ahd/2024 for A.Ys. 2012-13 & 2013-14

14. The facts involved in these two appeals are identical to ITA No.1967/Ahd/2024 for the A.Y. 2011-12. For the Assessment Years 2012-13 & 2013-14 also, the Assessing Officer had recomputed the

income of the assessee at Rs. Nil, pursuant to order of the Ld. CIT(A) in respect of quantum addition. Therefore, there was no case for imposition of penalty under section 271(1)(c) of the Act in these two assessment years as well. Accordingly, the penalty levied by the Assessing Officer under section 271(1)(c) of the Act for the A.Y. 2012-13 & 2013-14 are deleted. Thus, the appeals in ITA Nos.1968 & 1969/Ahd/2024 for A.Ys. 2012-13 & 2013-14 are allowed.

15. In the result, all the three appeals of the assessee are allowed.

Order pronounced in the open Court on this 19th May, 2025.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Ahmedabad, the 19th May, 2025

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

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Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad