

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

**Before Shri Sanjay Garg, Judicial Member
And
Shri Bijayananda Pruseth. Accountant Member**

I.T.A. No.904/SRT/2024
(Assessment Year: 2016-17)

Gopal Chandak, Shop No.6046, Ambaji Market, Ring Road, Surat-395002.	Vs.	The Assistant Commissioner of Income Tax, Circle-1(2), Surat.
[PAN No.ACVP2544A]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Mehul Shah, AR
Respondent by:	Shri Mukesh Jain, Sr. DR

Date of Hearing	04.03.2025
Date of Pronouncement	27.05.2025

O R D E R

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Assessee against the order passed by the Learned Commissioner of Income Tax (Appeal), Ahmedabad/ National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as “Ld.CIT(A)”] passed u/s.250 of the Income Tax Act, 1961 (here-in-after referred to as “the Act”) relevant to the Assessment Year 2016-17.

2. The Assessee has taken the following grounds of appeal:-

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"1. 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. 43,00,000/-u/s.271-1 of the I.T. Act, 1961.

2. It is therefore prayed that the above penalty levied by the assessing officer and confirmed by the learned 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 the appeal."

3. In this appeal, the assessee has assailed the order of the "Ld.CIT(A)" confirming the action of the Assessing Officer (in short "the AO") in levying the penalty of Rs.43,00,000/- u/s 271-I of the Income Tax Act, 1961.

4. The brief facts of the case are that during the year under consideration, the assessee had made outward remittance for importing machineries from various foreign countries. On verification of the outward remittances made to various companies at China, "AO" observed that assessee has not furnished the necessary certificate i.e. Form No. 15CA in respect of all remittances made after the date 01.06.2015.

5. It is to be noted that the provisions of section 195(6) of the income Tax Act got amended by the Finance Act 2015 w.e.f. it 01.06.2015. Before this amendment, the assessee was not required to file Form 15CA in cases, where income of payee is not chargeable to tax. The sub section 6 of the

section 195 of the Act has been amended w.e.f 01.06.2015. The said amended section 195(6) of the Act states as under:

“...195(6) The person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed...”

6. Now the plea of the assessee is that the corresponding Rules prescribing the form & manner for furnishing of such information were not notified at the relevant time. The relevant Rule 37BB of the Act was amended w.e.f 01.04.2016. Prior to 01.04.2016 as per the Rule 37BB of the Act (unamended), the information relating to foreign remittance was to be provided in Form 15CA/15CB. As per the said unamended Rule, the remitter was required to report foreign remittances in Form No.15CA only in respect of payment chargeable to tax. Admittedly, the foreign remittances made by the assessee were not chargeable to tax at the hands of payee. The assessee was thus under bonafide belief that he was not supposed to furnish Form 15CA in regard of foreign remittances made by the assessee. Even the bank authorities also did not demand the Form 15CA in respect of foreign remittances as there was no such requirement as per the then prevalent Rule 37BB.

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7. We have heard the rival contention and gone through the record. As per the amended section 195(6) of the Income Tax Act amended w.e.f 01.06.2015 the remitter is required to furnish information relating to payment in such form and manner as may be prescribed. However, the form and the manner in which information was to be furnished has been notified w.e.f 01.04.2016. The Assessee thus was under bonafide belief that the furnishing of information in Form 15CA by him was not required as the relevant Rule 37BB as existing during the relevant period, did not prescribe for furnishing of Form 15CA in respect of remittances not chargeable to tax. Under the circumstances, the action of the lower authorities in imposing the impugned penalty, when the corresponding Rules/Form/manner of furnishing of information was notified, is not justified. Accordingly the impugned penalty is ordered to be deleted. The appeal of the assessee is hereby allowed.

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

This Order pronounced in Open Court on 27.05.2025

Sd/-
(Bijayananda Pruseth
Accountant Member

Sd/-
(Sanjay Garg)
Judicial Member

Ahmedabad; Dated 27.05.2025
Manish, Sr. PS

(True Copy)

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, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad