

# IN THE INCOME TAX APPELLATE TRIBUNAL, DIVISION BENCH, JODHPUR

HEARING THROUGH: VIRTUAL MODE

**BEFORE: SHRI. LALIET KUMAR, JM & DR. MITHA LAL MEENA, AM**

ITA No. 687 TO 691 /Jodh/ 2024  
Assessment Year : 2012-13 To 2016-17

Rawat Prabhu Prakash Singh Chundawat HUF Hotel Amet Haveli, Panch Deveri Marg, Outside Chandpole, Udaipur	Vs.	The Deputy CIT Central Circl-2 Udaipur
PAN NO: AAKHR0754E		
Appellant		Respondent

Assessee by : Shri Amit Kothari, C.A  
Revenue by : Shri Karni Dan, Addl. CIT(Sr. D.R)

Date of Hearing : 19/05/2025  
Date of Pronouncement : 02/06/2025

## आदेश/Order

### **PER LALIET KUMAR, J.M:**

These are appeals filed by the assessee against the consolidated order passed by the Ld. CIT(A), NFAC, Delhi upholding the levy of penalty under section 271(1)(c) of the Income Tax Act, 1961 ["the Act"] for the Assessment Years 2012-13 to 2016-17.

2. The brief facts of the case are that the assessee is a Hindu Undivided Family engaged in the hospitality business through Ambrai Restaurant. A survey under section 133A of the Act was conducted on 21.02.2019. During the course of survey, the assessee was required to furnish purchase bills and details of expenses relating to the operation of the restaurant from Financial Year 2011-12 to 2017-18. In compliance, the assessee submitted details on 11.03.2019, wherein it was shown that the ratio of food cost to sales ranged between 44% to 59% across the years.

2.1 It was noted by the authorities that while several purchases were backed by third-party bills, certain items, especially perishable goods such as fruits and vegetables,

were purchased from local vendors who did not issue formal invoices. These transactions were recorded in the regular books and supported by internal vouchers. Considering the possibility that some expenses may not be fully verifiable, the assessee, on a conservative basis, offered additional income in the returns filed under section 148 of the Act on 27.04.2019 for the relevant years. These returns included additional income to cover such unverifiable expenses, and assessments were completed accepting the returned income in all the years. The only exception was in Assessment Year 2014-15, where an addition of Rs.2,48,131/- was made on account of additional depreciation claimed.

2.2 Despite the fact that the income offered by the assessee was accepted and assessments were completed without significant variation, the AO proceeded to initiate and levy penalty under section 271(1)(c) of the Act on the ground of furnishing inaccurate particulars of income.

3. The Ld. AR for the assessee submitted that the penalty so levied is unjustified both in law and on facts. It was submitted that the assessee voluntarily disclosed additional income during the course of the assessment proceedings and before completion of assessment, merely to cover any unverifiable expenses and to avoid prolonged litigation. The Ld. AR emphasized that there was no finding of concealment of income or furnishing of inaccurate particulars by the Assessing Officer, nor was there any reference to any specific bogus or fictitious expenditure.

3.1 The Ld. AR pointed out that the purchases were duly recorded in the books of account, supported by internal vouchers where third-party bills were not available, and the expenditure was incurred in the ordinary course of business. It was further submitted that there was no rejection of books of account, nor any independent evidence or material unearthed during the survey to indicate suppression of income. The surrender was made to buy peace and avoid estimation and disputes.

3.2 The Ld. AR further contended that the penalty order fails to specify whether the penalty is being levied for "concealment of income" or "furnishing inaccurate particulars." The twin conditions prescribed under section 271(1)(c) are not satisfied in the present case. In support of the above contentions, the Ld. AR relied on several judicial precedents, including:

- *CIT v. Pushpendra Surana* [(2014) 264 CTR (Raj) 204]
- *CIT v. Reliance Petroproducts (P) Ltd.* [(2010) 322 ITR 158 (SC)]
- *PricewaterhouseCoopers (P) Ltd. v. CIT* [(2012) 253 CTR (SC) 1]
- *Narang Land Development Corp. v. ITO* [(2024) 38 NYPTTJ 1256 (Mum)]
- *Ajoy Sharma v. DCIT* [(2024) 114 ITR (Trib) 702 (JP)]
- *Bhaktvatsal Sadguru Trust v. ACIT* [(2025) 39 NYPTTJ 493 (Nagpur)]

3.3 The Ld. AR emphasized that where the income declared in the return under section 148 is accepted without any variation, and the disclosure is made before detection by the Assessing Officer, the same cannot be construed as furnishing of inaccurate particulars or concealment of income.

4. The Ld. DR for the revenue relied upon the order passed by the lower authorities.

5. We have heard the rival contentions and perused the material available on record. We note that the assessee has made a suo moto offer of additional income in the revised returns filed under Section 148, and the Assessing Officer has accepted it without drawing any adverse inference regarding the genuineness or correctness of the books of account. Except for A.Y. 2014-15, no addition has been made by the AO in the assessment orders.

5.1 We further observe that the assessee had originally filed the returns of income for all the five assessment years well within the prescribed due dates. However, the filing of the revised returns of income under section 148 was triggered by certain discrepancies noted during survey proceedings conducted on 21.02.2019, particularly in relation to unverifiable food-related expenses. It was given these findings and in order to cover any possible disallowance on an estimated basis that the assessee offered additional income in the revised returns filed on 27.04.2019. The details of the original returns and the revised returns of income, along with the additional income declared and the penalty levied under section 271(1)(c), are summarised as under:

Particulars	2012-13	2013-14	2014-15	2015-16	2016-17
Original Return filed on	30.09.12	29.09.13	28.11.14	30.9.15	17.10.16

Income Declared	4773180	5593450	5789180	6030920	7237690
Return filed u/s 148	27.04.19	27.04.19	27.04.19	27.04.19	27.04.19
Income returned in revised return	6573180	6745320	7496690	8925790	10337690
Additional income included in return	1800000	1400000	1700000	2900000	3100000
Addition made in assessment	0	2,48,131/- for additional depreciation claimed in revised return	0	0	0
Assessed income u/s 147	6573180	6993451	7496690	8925790	10337690
Penalty u/s 271(1)(c) levied.	556199	432600	527620	894515	1201374

5.2 We note that the additional income was offered in the return filed under section 148. No incriminating documents indicating suppression or bogus transactions were found during the survey. The expenses in question were supported by internal vouchers and recorded in regular books. The Assessing Officer accepted the revised returns without any adverse inference, except a minor disallowance in one year.

5.3 In *Reliance Petroproducts (supra)*, the Hon'ble Supreme Court has held that mere disallowance or surrender of a claim, without establishing concealment or inaccuracy in particulars of income, does not attract penalty under section 271(1)(c). Likewise, the Rajasthan High Court in *Pushpendra Surana (supra)* has held that where income offered under section 148 is accepted and there is no independent evidence of concealment, penalty cannot be sustained.

5.4 In the present case, the offer of income was not based on any incriminating material but made with the intent to avoid prolonged litigation over estimation of unverifiable expenses. Such surrender cannot be equated with furnishing inaccurate particulars. There is also no satisfaction recorded by the AO as to which limb of section

271(1)(c)—concealment or furnishing inaccurate particulars—was violated. This vitiates the penalty proceedings, as held in Manjunatha Cotton & Ginning Factory [(2013) 359 ITR 565 (Karn.)].

5.5 In view of the above facts and in light of the settled judicial position, we are of the considered view that the penalty levied under section 271(1)(c) in all the five assessment years is not sustainable and deserves to be deleted.

6. In the result, all the above appeals of the assessee are allowed.

(Order pronounced in the open Court on 02/06/2025 )

**Sd/-**  
**(DR. MITHA LAL MEENA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

**AG**

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, JODHPUR
6. Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar