



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH(SMC),
RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 51/RJT/2025

Assessment Year: (2014-15)

(Hybrid Hearing)

Jethanand Atmaram Dhanwani Plot No. 368, Wd – 2/B, Adipur – Kutch-370205	Vs.	ITO, Ward - 1
स्थायीलेखासं./जीआइआरसं. At/PAN/GIR No.: AFVPD8813Q		
(Appellant)		(Respondent)

Appellant by	: Shri Kalpesh Doshi, Ld. A.R.
Respondent by	: Shri Abhimanyu Singh Yadav, Ld. Sr. DR
Date of Hearing	: 10/03/2025
Date of Pronouncement	: 04/06/2025

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals). National Faceless Appeal Centre, Delhi [in short "the Ld. CIT(A)/NFAC"], dated 27/11/2024, which in turn arises out of an assessment order passed by Assessing Officer (in short the AO) u/s. 271 (1) (C) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), dated 25/06/2019.



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

1 That the Ed CIF(A) has erred in law to explicitly mention that penalty proceedings are being initiated for furnishing of inaccurate particulars or that for concealment of income and has also failed to explicitly conclude as to whether the default is on account of concealment or inaccurate particulars of income in the Penalty order

2. That, the Ed CITA) has wrongly confirmed levy of penalty of Rs. 5.68.529-us 27101ite) of the LT Act. 1961

3. That the findings of the 1d assessing officer are not justified and are bad-in-law

The assessee craves to add amend, alter or delete any of the above grounds of appeals

3. Succinctly, the factual panorama of the case is that assessee before me, is an Individual. The assessee derived income from pension from Kandla Port Trust The assessee's case was reopened u/s 147 r.w.s. 148 of the Act. In response to the notice, the assessee has filed his revised return of income declaring total income of Rs.42.68.430/-, thereafter, order u/s 143(3) r.w.s. 147 of the Act completed on 21.12.2018, and determined taxable income of Rs.92.77.720/-The said order was completed by the then assessing officer, a valuation report of AVO will be finalized, the actual 1. TCG payable. The said valuation report have 1 on 30/05/2019. While finalizing the order, the assessing officer also had initiated penalty proceedings u/s 271(1)(c) of the Act. Accordingly, penalty notice u/s 271(1)(c) of the Act also issued on 21/12/2018.

4. In response to the penalty notice, the assessee had filed written reply on 18/06/2019, before the assessing officer. The assessee submitted that it is very clear on reading the provisions of section 50C of the Act, which provides that the value as assessed or accessible by Stamp



Valuation Authority, shall be deemed to be the full value consideration, accruing to the assessee and thus these are only presumptive provisions: Thus the provision of section. Su an deeming in nature the assessing officer made an addition being difference between sale consideration as per sale deed and valuation made by the stamp valuation authority. The valuation of stamp duty authority is not a conclusive evidence of actual fair market value of the property. The assessee also submitted that assessing officer has not brought any evidences on record by which it can be established that the assessee has received more than the amount shown to have received as per the sale deed. The assessee has produced before assessing officer all the materials facts, in the course of the assessment proceedings and the assessing officer has not brought any evidences to show that the assessee has concealed particulars of income or furnished any inaccurate particulars, during the course of assessment proceedings and the valuation of the stamp authority is not a conclusive evidence of receipt of the money by assessee over and above what is recorded in the sale deed.

5. However, the assessing officer rejected the contention of the assessee and observed that assessee has furnished inaccurate particulars of income as well as concealed particulars of income, therefore, assessing officer, imposed penalty under section 271(1) (C) of the Act, to the tune of Rs.5,68,529/-

6. Aggrieved by the order of assessing officer, the assessee carried the matter in appeal before the Id. CI(A), who has confirmed the action of the assessing officer. Therefore, assessee is in further appeal before me.



7. Shri Kalpesh Doshi. Learned Counsel for the assessee, vehemently argued that according to the provision of section 271(1)(c) of the Act, it is the responsibility of the assessing officer to establish whether there is "Concealment of the income", or "Furnished the inaccurate particulars of income" to levy penalty. In the case, where penalty is proposed to be levied u/s 271(1)(c) of the Act, read with explanation-1, the assessing officer is required to come to the conclusion that explanation furnished by the assessee was false or such person is not able to substantiate and fails to prove that such explanation was bona fide and that all the facts relating to the same and material to the computation of his total income have not been disclosed by the assessee. Therefore, it has been never found that the assessee has furnished inaccurate particulars of income or concealed any income. The Id. Counsel further stated that the penalty notice issued u/s 271(1)(c) of the Act, specifies that penalty proceeding has been initiated on account of furnishing inaccurate particulars of income. The copy of the penalty notice is enclosed at page no. 10-11 of the paper book. However, the penalty order u/s 274 r.w.s. 271(1)(c) of the Act, on perusal of the said order, it is clearly evident that the assessing officer has not strike out, as to whether the penalty is sought to be levied on the "furnishing inaccurate particulars of income or concealing particulars of income." Thus, the notice and order of the penalty differs in specifying the limb of Section 271(1)(c) of the Act. that is, whether the penalty proceedings are initiated for concealment of particulars of income or furnishing of inaccurate particulars of income. Since the penalty notice is defective, therefore, penalty imposed by the assessing officer should be deleted, for that Id. Counsel relied on the following judgements:



(i) CIT vs. SSA Emerald Meadows (73 Taxmann.com 248) (SC)

“Section 274, read with section 271(1)(c). of the Income-tax Act 1961 Penalty Procedure for imposition of (Conditions precedent) - Assessment year 2009 10-Tribunal relying on decision of Division Bench of Karnataka High Cou rendered in case of CIT v. Manjunatha Cotton & Ginning Factory (2013) 359 IT 565/218 Taxman 423/35 taxmann.com 250, allowed appeal of Appellant holding the notice issued by Assessing Officer under section 274 read with section 271(1)(c) was had in law, as it did not specify under which limb of section 271(1)(c) penalty proceedings had been initiated, whether for concealment of particulars of income or furnishing of inaccurate particulars of income High Court held that matter was covered by aforesaid decision of Division Bench and therefore there was no substantial question of law arising for determination Whether since there was no merit in SLP filed by revenue, same was able to be dismissed Held as (Para 2) [In favour of assessee) decision of apex court in case of Ashok Pai v CII (292 IFR 11) wherein it was observed that concealment of income and furnishing of inaccurate particulars of income in section 271(1)(c) of the Act, carry different meanings/connotations

(ii) CIT vs Anr. V. Manjunatha Cotton and Ginning Factory (359 ITR 565) (Kar HC)

held that notice u/s. 274 of the Act should specifically state as to whether penalty is being proposed to be imposed for concealment of particulars of income or for furnishing inaccurate particulars of income

Based on the above facts and circumstances, the ld. Counsel argued that the penalty imposed by the assessing officer may be deleted.

8. On the other hand, learned DR for the revenue submitted that there is no difference between the terminology, concealment of Income, and furnishing inaccurate particulars of income. The assessee was informed during the assessment proceedings that the penalty is to be initiated on account of furnishing of inaccurate, particulars of income, and that is sufficient requirement under the Act. Just to forget to tick a particular



limb in the penalty order, does not vitiate the penalty proceedings. The intention to initiate the penalty proceedings by the assessing officer should be taken into account.

9. I have heard the Learned Counsel appearing on behalf of the respective parties at length. I note that in the Penalty order u/s 271 (1)(C) of the Income Tax Act 1961, the Assessing Officer, has observed as follows:

"In view of the facts and circumstances of the case and as per the discussion above if it is established that the assessee has furnished inaccurate particulars of income as well as concealed particulars of income, therefore, it is a fit case for levy of penalty u/s. 271(1)(c) of the Act.

Therefore. I find that in penalty order u/s 271 (1)(C) of the Income Tax Act 1961, the Assessing Officer, has initiated penalty on both limbs, that is, "furnished inaccurate particulars of income as well as concealed particulars of income"

10. However, in the assessment order, the Assessing Officer, vide order dated 21/12/2018, passed u/s 148 read with section 143(3) of the Income Tax Act. initiated the penalty as follows:

Assessed u/s. 148 r. w s. 144 of the IT Act. 1961 Give credit for taxes pre-paid, if any after due verification. Charge interest us. 2344 2348. 2340 and 2341) as applicable & withdraw interest u/s 2448 of the Act if granted Issue Demand Notice and challan accordingly. Issue penalty notice u/s 274 r. w.s. 271(1)(c) for furnishing of inaccurate particulars of income.

From the above, it is vivid that assessing officer, during the assessment proceedings, initiated penalty proceedings ***for furnishing of inaccurate particulars of income.***



11. The penalty notice issued u/s 271(1)(c) of the Act, specifies that penalty proceeding has been initiated on account of ***furnishing inaccurate particulars of income***. I note that the Assessing Officer in penalty order u/s 271 (1)(C) of the Income Tax Act 1961, has imposed the penalty on both limbs, that is, ***"furnished inaccurate particulars of income as well as concealed particulars of income"*** Whereas in the assessment proceedings, the assessing officer had initiated penalty proceedings ***for furnishing of inaccurate particulars of income***. From the notice itself, one can see that Assessing Officer has issued inaccurate notice for inaccurate particulars of income, whereas in the penalty order, the assessing officer imposed penalty on both limbs, that is, ***"furnished inaccurate particulars of income as well as concealed particulars of income"*** Hence, penalty levied by the Assessing Officer is bad-in-law and for that I rely on the judgment of Hon'ble Bombay High Court in the case of Principal Commissioner of Income-tax (Central), Bengaluru vs. Goa Coastal Resorts and Recreation (P.) Ltd. [2020] 113 taxmann.com 574 (Bom)/[2020] 272 Taxman 157 (Bom) [11-11-20191, wherein it was held as follows:

4 Mr. Rao, learned Advocate for the assessee points out that there is absolutely no finding as regards concealment or furnishing of inaccurate particulars. He further points out that in the notice issued to the assessee on 30/09/2016, the Deputy Commissioner had not even bothered to strike down the relevant portion of the printed form in order to indicate whether the satisfaction is based upon the concealment of particulars or furnishing of inaccurate particulars He relies on C Samson Permchery (2012/88 taxmann.com 413/392 ITR 4 (Bom) and CTT vs. New Era Sova Mine (2019) SCC online Bom 1032 to submit that on the basis of such a defective notice award of penalty can never be sustained

5 We have carefully examined the record as well as duly considered the rival contentions Both the Commissioner (Appeals) as well as the II AT have categorically held that in the present case, there is no record of satisfaction by the Assessing Officer that there was any concealment of income or that any inaccurate particulars were furnished by the assessee This being a sine qua non for initiation of penalty proceedings in the absence of such petition,



the two authorities have quite correctly ordered the dropping of penalty proceedings against the petitioner

6. Besides, we note that the Division Bench of this Court in Samson Preinchery (supra) as well as in New Era Sova Mine (supra) has held that the notice which is issued to the assessee indicate whether the Assessing Officer is satisfied that the case of the assessee involves concealment of particulars of income or furnishing of inaccurate particulars of income or both with clarity. If the notice is issued in the printed form, then, the necessary portions which are not applicable are required to be struck off so as to indicate with clarity the nature of the satisfaction recorded. In both Samson Perinchery and New Era Sova Mine (supra), the notices issued had not struck off the portions which were inapplicable. From this, the Division Bench concluded that there was no proper record of satisfaction or proper application of mind in matter of initiation of penalty proceedings

7. In the present case, as well if the notice dated 30/09/16 (at page 3) is perused, it is apparent that the relevant portions have not been struck off. This coupled with the fact adverted to in paragraph (3) of this order, leaves no ground for interference with the impugned order. The impugned order are quite consistent by the law laid down in the case of Samson Perinchery and New Era Sova Mine (supra) and therefore warrant no interference.

8. The contention based upon MAK Data (P) Ltd. (supra) also does not appeal to us in the peculiar facts of the present case. The notice in the present case is itself defective and further, there is no finding or satisfaction recorded in relation to concealment or furnishing of inaccurate particulars.

9. For the aforesaid reasons, we hold that no substantial questions of law arises in this appeal. Consequently this appeal is dismissed."

12. I note that Hon'ble Bombay High Court in the case of Mohd. Farhan A Shaikh vs. Deputy Commissioner of Income-tax, Central Circle-1, Belgaum [2021] 125 taxmann.com 253 (Bom), wherein the penalty u/s. 271(1)(c) was deleted on account of defective penalty u/s 271(1)(c) of the Act. The Hon'ble Bombay High Court held that assessment order clearly records satisfaction for imposing penalty on one or other, or both grounds mentioned in section 271(1)(c), a mere defect in notice not striking off irrelevant matter would vitiate penalty proceedings.



Hence, I am not inclined to accept the contention of the Assessing Officer, in levying the penalty under section 271(1)(c) of the Act, in any manner and hence the penalty u/s. 271(1)(c) of the Act, imposed by the assessing officer is deleted. Hence this ground of the assessee is allowed.

13. In the result, appeal filed by the assessee is allowed.

Order is pronounced on 04/06/2025 in the open court.

**Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER**

Rajkot (True Copy)

दिनांक/ Date: 04/06/2025

Copy of the Order forwarded to:

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

By Order
Assistant Registrar/Sr. PS/PS
ITAT, Rajkot