IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH "SMC", RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
(Hybrid Hearing)

ITA No.09/RJT/2024
Assessment Year: (2010-11)

Subhas Hansaraj Nandu Opp:Shambhu Maharaj Bungalow Bhachau, Gujarat. PAN : AFRPN 0720 J	Vs.	National Faceless Assessment Centre, Delhi.
(Assessee)		**(Respondent)**

निर्धारिती की ओर से/Assessee by : Shri Kalpesh Doshi, Ld. AR

राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Ld. Sr.DR

सुनवाई की तारीख/Date of Hearing : 11/03/2025

घोषणा की तारीख/Date of Pronouncement : 05/06/2025

आदेश / O R D E R

Per, Dr. A. L. Saini AM

Captioned appeal filed by the assessee, pertaining to Assessment Year 2010-11, is directed against the order passed by Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi, vide order dated 08.11.2023, which in turn arises out of penalty order passed by the Assessing Officer, dated 17.01.2022, u/s. 271(1)(c) of the Income Tax Act, 1961.

2. The grounds raised by the assessee, in the appeal, are as follows:

"1. That, the Ld. CIT(A) has wrongly confirmed levy of penalty of Rs. 3,72,329/- u/s 271(1)(c) of the I.T. Act, 1961.

2. That, the findings of the Ld. Assessing Officer and ld CIT(A) are not justified and are bad in law."

3. Briefly stated, the relevant material facts are as follows. The assessee (Subash H. Nandu- PAN: AFRPN0720J), had filed his return of income for the assessment year 2010-11, on 14-10-2010, declaring total income of Rs.16,07,990/-. Subsequently, the assessee`s case has been selected for scrutiny under CASS. Accordingly, notice u/s.143(2) of the Act, was issued on 25-08-2011. Thereafter, notices u/s.142(1) and questionnaire were issued to the assessee from time to time. In response to these notices, the assessee attended and submitted the details/explanation as called for. During the assessment Proceedings, assessing officer has perused the assessee's submissions and completed the assessment u/s.143(3), on 20-03-2013, and assessed the total income at Rs.28,12,940/-, by making the addition of Rs.12,04,950/-, u/s.68 of the Act, as unexplained cash credit and disallowed payment of interest of Rs.54,950/- to the alleged parties. The assessing officer had initiated penalty proceedings u/s.271(1)(c) of the Act, on 20-03-2013, for furnishing inaccurate particulars of income.

4. Against the assessment order passed u/s.143(3) dated 20-03-2013, the assessee preferred appeal before the CIT(A). The CIT(A), vide order No. CIT(A)-3/10232/13- 14 dated 18-09-2019 dismissed the assessee's appeal *ex-parte,* and did not admit the additional evidences of the assessee.

5. Thereafter, assessing officer, had initiated proceedings u/s.271(1)(c) of the Act and issued notice to the assessee, stating that why the penalty should not be imposed. In response to the show- cause notice issued, the assessee had submitted its explanation dated 23.08.2021, the assessee also quoted some case laws. However, the assessing officer rejected the contention of the assessee and held that since in the quantum proceedings, the Assessing Officer has made an addition

of Rs.11,50,000/-, treating as unexplained cash credit u/s. 68 of the Act and added to the income of the assessee, also the payment of interest of Rs.54,950/- made to the alleged 4 parties was disallowed and added to the income of the assessee. Accordingly, the assessing officer has initiated penalty proceedings u/s. 274 r.w.s 271(1) (c) as the assessee has furnished inaccurate particulars of income. During the penalty proceedings, the assessing officer noticed that assessee has failed to explain the sufficient cause, therefore, assessing officer noted that it is a fit case for levy of penalty u/s.271(1)(c) of the Income tax Act. The assessing officer noticed that as per the provisions of section 271(1)(c) of the Act, where the assessee willfully concealed the particulars of income, penalty can be imposed at 100% of the tax sought to be evaded which can be extended upto 300%. Accordingly, the minimum penalty leviable worked out by the assessing officer to the tune of Rs.3,72,329/-. Therefore, assessing officer-imposed penalty to the tune of Rs.3,72,329/-, under section 271(1)(c) of the Act.

6.Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the penalty imposed by the assessing officer. The Ld. CIT(A) noticed that assessee had given no reasons as to why this additional evidence could be produced at the assessment stage. The credibility of the confirmations given by the assessee is also doubtful, as when independently inquired by the assessing officer, one of the creditors has denied having any transaction with the Assessee. The Assessee has not furnished any explanation in this respect in the the appellate proceedings. Accordingly, the penalty of Rs.3,72,329/- levied by the assessing officer u/s 271(1)(c) of the Income-Tax Act was confirmed by Ld. CIT(A).

7.Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before this Tribunal.

8. Shri Kalpesh Doshi, Learned Counsel for the assessee submitted that the assessee is engaged in the transportation business and whatever payment he received has been shown in the profit and loss account, as an income. The assessee has received the amount from the customers through banking channel. The assessee had filed confirmations, during the assessment proceedings. Despite, submission of all these evidences, the assessing officer made the addition. The Ld. Counsel stated that the quantum proceedings are different and the assessment proceedings are different. If the quantum addition is accepted by the assessing officer, that does not mean that the penalty shall be levied. The Ld. Counsel stated that against the quantum addition of the assessing officer, the assessee has filed appeal before the Ld. CIT(A). Before Ld. CIT(A), the assessee had filed the required documents and additional evidences. However, the Ld. CIT(A) did not call the remand report from the assessing officer and adjudicated the issue *ex parte*, without calling the remand report. Therefore, Ld. Counsel submitted that during the quantum proceedings, before the assessing officer, as well as during the appellate proceedings, before the Ld. CIT(A), the assessee, had filed the additional evidences, to prove his claim, hence, there is no conscious concealment of income, therefore, the penalty should be deleted.

9. On the other hand, Learned DR for the Revenue submitted that the assessee has not challenged the quantum addition made by the Ld. CIT(A) and the assessee has accepted the quantum addition, therefore the penalty should be imposed on the assessee. The Ld. DR also submitted that the assessee has failed to prove the sufficient cause, therefore, the penalty imposed by the assessing officer should be sustained. For that, the Ld. DR for the Revenue relied on the judgment of the Hon'ble Supreme Court in the case of Mak Data Pvt. Ltd. Vs. CIT, 358 ITR 593 (SC) and also relied on the judgment of the Hon'ble Delhi High Court in the case of CIT Vs. Zoom Communication P. Ltd., 327 ITR 510 (Del)

and stated that since the assessee has accepted the quantum addition made by the assessing officer, therefore, the penalty imposed by the assessing officer, u/s 271(1)(c) of the Income-Tax Act, should be sustained.

10. In rejoinder, the Ld. Counsel for the assessee submitted that the decision stated by the Ld. DR for the Revenue in the case of Mak Data Pvt. Ltd. (supra) does not apply to the assessee under consideration, as the assessee has brought all the details, documents and information before the assessing officer, and there is no conscious concealment, on the part of the assessee, therefore, this case law is not applicable to the assessee. About the judgment of the Hon'ble Delhi High Court in the case of Zoom Communication Pvt. Ltd. (supra), the Ld. Counsel for the assessee submitted that there is no concealment of facts by the assessee, and no inaccurate particulars furnished by the assessee. Therefore, this judgment is not applicable to the assessee under consideration.

11. I have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. The assessee is an individual and proprietor of M/s Swastik Transport, engaged in the business of transportation. During the year under consideration, the return of income for the year under consideration is filed on 14/10/2010, declaring a total income to the tune of Rs. 16,07,990/-. The assessee is regularly filling his return of income and is assessed to tax since past many years. The assessee has maintained regular books of accounts and the same are duly audited by the qualified chartered accountant. The assessing officer has made addition of Rs. 11,50,000/- on account of cash credit in the bank accounts. The additions were made without appreciating facts and initiated penalty proceedings u/s 271(1)(c) of the Act. During the course of assessment proceedings, the assessee has duly produced books of accounts with

all supporting documents as and when called for by the assessing officer along with the copy of PAN, ITR and bank statements of majority parties except few parties due to lack of cooperation. All the cash credits have been received from various parties through normal banking channel and to carry on business activities. However, the assessment order has been passed u/s 143(3) of the Act. The income has been assessed by making addition of Rs. 11,50,000/- on account of unexplained cash credit u/s 68 of the I.T. Act, 1961 and disallowing Rs. 54,950/- on account of interest paid to the depositors. The above narrated facts clearly state that the initial onus was duly discharged by the assessee, during the assessment proceedings and then the onus was upon the department to collect all the details from the third parties. Since the department could not get the details from the third parties, the same was collected by the assessee and furnished before the Ld. CIT(A), during the appellate proceedings, along with an application for admission of additional evidence under Rule 46A of the Rules, wherein it was stated that the assessee was unable to provide details with respect to only 4 parties, as it was difficult to collect all the documents from them at the time of assessment proceedings due to lack of cooperation from third parties. However, the Learned CIT(A) without considering the facts of the case, vide order dated 18/09/2019, has passed the order *ex-parte* and did not admit the additional evidences furnished by the assessee, during the appellate proceedings.

12. I note that the identity of the depositor, genuineness of deposit and creditworthiness of the depositor is duly proved and therefore, the assessee has duly discharged the initial onus. The assessee has duly furnished all the details during the course of Penalty Proceedings as well as in quantum proceedings, therefore non- compliance with respect to a couple of parties, would not render the amount as unexplained. Moreover, at no stage there is any finding on record that assessee has consciously and willfully concealed the income or provided any

inaccurate particulars of income to the revenue authorities. I note that the depositors have confirmed the transactions. Therefore, even if the addition is confirmed by the Ld. CIT(A), merely on technical grounds, still penalty cannot be levied, as all the supporting documents to prove the genuineness of the cash credits that is, the copy of PAN, bank statement and confirmation letter have been submitted by the assessee. Considering these facts, I note that there is neither concealment of income nor furnishing any inaccurate particular of income, on the part of the assessee. There is no conscious concealment on the part of the assessee. I note that penalty cannot levied, it if the assessee had discharged its onus. It is settled position of that assessment proceedings and penalty proceedings are different. Merely because the additions made by the assessing officer and confirmed by the Ld. CIT(A) by passing *ex-parte* order, and the assessee does not challenge the order of the Ld. CIT(A) before the Tribunal, does not mean that penalty should be imposed on the assessee.

13. I find that if the Income Tax Act is analyzed, it is seen that there are three different ways in which the statutory requirements are enforced, namely: (i) by levying interest (ii) by imposing penalties if the default has been occasioned without reasonable cause and (iii) by punishing the assessee treating the assessee in default as an offence, if it is proved that it was caused by willful failure. These are the three varying degrees of defaults and the statute clearly keeps up the distinction between the three modes. In Hindustan Steel Ltd. v. State of Orissa [83 ITR 26), the Hon`ble Supreme Court observed that whether the penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all relevant circumstances and that even if a minimum penalty is prescribed the authority competent to impose the penalty will be justified in refusing to impose a penalty when there is a mere technical or venial breach of the provisions of the

Act. Again, in Mansukhlal & Bros v. CIT [73 ITR 546], the Hon`ble supreme Court had observed that the penalty is not uniform and its imposition depends upon the exercise of discretion by the taxing authorities and is imposed as a part of the machinery for assessment of tax liability. The words may direct that such person shall pay by way of penalty in section 271(1) (c) leave a certain amount of discretion in imposition of penalty which need not be imposed when there is a minor breach of the law and when having regard do the facts ends of justice require that the assessee should not be penalized. So, also where the circumstances of a case establish that the mistake is accidental and inadvertent and there is no material at all to justify any want of bona fide or any gross neglect, imposition of penalty is not justified. [Mahadeshwara Movies 144 ITR 127 (kar)].

The words 'reasonable cause' in section 273B of the Act, must necessarily have a relation to the failure on the part of the assessee to comply with the requirement of the law which he had failed to comply with. In case of delay in compliance, the cause shown must be for the whole of the period of the delay and not merely for a part thereof. If the cause shown is such as to explain the delay as a whole and constitutes a good reason for the non-compliance, no penalty would be leviable.

14. I note that assessee has explained the sufficient cause in a satisfactory manner. Therefore, considering these facts, and the precedents applicable to these facts, I am of the view that penalty should not be imposed on the assessee. Accordingly, I, delete the penalty.

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

Order pronounced in the open court on 05/06/2025.

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

Rajkot
दिनांक/ Date: 05/06/2025

Copy of the Order forwarded to

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

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot

		Date
1.	*Draft dictated on*	*11.03.2025*
2.	*Draft placed before author*	
3.	*Draft proposed & placed before the second member*	
4.	*Draft discussed/approved by Second Member.*	
5.	*Approved Draft comes to the Sr.PS/PS*	
6.	*Kept for pronouncement on*	
7.	*File sent to the Bench Clerk*	
8.	*Date on which file goes to the AR*	
9.	*Date on which file goes to the Head Clerk.*	
10.	*Date of dispatch of Order.*	
11.	*Draft dictation sheets are attached*	