

IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

ITA No. 400/Ran/2024

(Assessment Year-2016-17)

Jokhiram Durgadutt, 9, J.D. Corporate, Behind J.D. High Street, Main Road, Ranchi-834001 (Jharkhand) PAN No. AABFJ 2200 Q	Vs.	D.C.I.T., Circle-1, Ranchi.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri P. S. Paul, A.R.
Department represented by	Shri Khub Chand Pandya, Sr.DR
Date of hearing	09/06/2025
Date of pronouncement	09/06/2025

ORDER

PER: BENCH

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals), (in short, the Id. CIT(A)) dated 30/09/2024 for the A.Y. 2016-17. In this appeal, the assessee has raised following grounds of appeal:

- "1. That the assessment order passed is illegal, arbitrary and has been made out of surmises and conjectures.
2. That the Ld. Assessing Officer is not justified in imposing a penalty of Rs. 21,12,388/- u/s 271(1)(c) and the Id. CIT(A) is not justified in upholding the same.
3. That the other and further grounds shall be urged at the time of hearing."

2. Facts of the case, in brief, are that the assessment in this case was completed under Section 143(3) of the Income Tax Act, 1961 (in short, the Act) on 28/12/2018 by making addition of Rs. 68,36,208/- on the ground that an examination of Audited 'Rental Account' of the assessee shows that the Gross Annual Value, on which standard deduction was claimed, includes receipts from cinema amounting to Rs, 1,94,38,209/- Income from gaming zone amounting

to Rs. 25,45,651/-. Receipt from advertisement space amounting to Rs. 2,33,500/-, receipts from events amounting to Rs. 5,70,000/-, total amount comes to Rs. 2,27,87,360/-. From the above facts, the Assessing Officer held that the above receipts aggregating to Rs. 2,27,87,360/- is receipts as revenue receipts and not in form of Rent' as claimed by the assessee in its ITR. Hence in the facts and circumstances of the case, the standard deduction @30% on the aggregate amount of Rs. 2,27,87,360/- which comes to Rs. 68,36,208/- is disallowed and added to its total income since the said aggregate amount is actually a business receipt. Also, penalty proceedings under Section 271(1)(c) of the IT Act is separately initiated for furnishing of inaccurate particulars of income and finally imposed a penalty of Rs. 21,12,388/- under Section 271(1)(c) of the Act on the ground that the appellant has claimed the income under the head "Rental Income" and claimed standard deduction @ 30% which was subsequently treated as business receipt.

3. Aggrieved by the order of Assessing Officer, the appellant filed appeal before the Id. CIT(A), who vide the impugned order, confirmed the penalty order passed by the Assessing Officer on 25/03/2022 by holding that the appellant has wrongly claimed the business receipts as rent receipts to avail the benefit of deduction of 30% and upheld the action of Assessing Officer.
4. Aggrieved by the order of Id. CIT(A), this appeal has been filed by the assessee before this Tribunal. The Id. AR of the assessee filed a written submissions and submitted as under:

"The facts of the case is that the assessee had shown rental income which was subsequently treated as business income. All the facts and figures were disclosed in the return and has been accepted in all the earlier Assessment

Years. The assessee had paid higher taxes and due to the subsequent assessment proceedings which was upheld by the higher appellate authorities it's tax liability has been reduced and further refunds was issued.

Section 271(1)(c) reads as follows :-

(1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—

*(a) [**]*

(b)..... or

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income."

The penalty levied u/s 271(1)(c) of the Income Tax Act, 1961 is unsustainable due to the following reasons :-

1. It has been held in the case of CIT Vs. Reliance Petroproducts (P) Ltd. (2010) 036 DTR 0449 (SC) attached as Annexure - 4 that"On the basis of mere disallowance of a claim made by the assessee in return of income, it cannot be said that the assessee was guilty of concealment or filing inaccurate particulars under section 271(1)(c) as all information was available in the return." In this case negative income was converted into positive income as in assessment the addition in respect of interest expenditure was made.

In assessee's case loss income was converted into again loss income.

2. It has been held by the Honourable Supreme Court in the case of Price Water House Coopers (P) Ltd. v. CIT (2012) 211 Taxman (0040) (S. C.) attached as Annexure - 5 that was not justified the tax audit report was filed along with the return and it unequivocally stated that provision for a payment of gratuity was not allowable. Assessee did not notice the discrepancy between the tax audit report and return of income. It was not even noticed by AO who formed assessment order. Therefore, the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars." So penalty was not levied when provision for gratuity was charged to the Profit and Loss account and claimed as expense in the return of the assessee.

3. In the identical facts of case, the assessee cites the judgement in the case of SRK Dev Build (P) Ltd. v Dy. CIT/ACIT (2024) Tax Pub(DT) 3557 (Ind - Trib)

attached as Annexure - 6 where it has been held that Assessment-proceeding and penalty-proceedings are two distinct and separate proceeding. Any addition / disallowance made in assessment proceedings and even if not contested by assessee for any reason, does not attract penalty automatically. In the instant case, AO merely rejected the claim of deductions of depreciation and interest made by assessee on the premise of change in taxability head but without finding any incorrect or erroneous or false information supplied by the assessee, therefore, no penalty was leviable under section 271 (1)(c)."

4. The contention of the Ld. Commissioner of Income Tax (Appeal) that the assessee had claimed an unallowable standard deduction of Rs. 68,36,208/- is fully compensated by way of depreciation being allowed Rs. 2,31,19,350/-. So, the revenue is no way being put at loss or in other wards the assessee has been benefited by the Income Tax Department by Rs. 1,61,83,142/-. Hence, it is at best a revenue neutral matter hence penalty U/s 271(1)(c) should not been imposed.

5. It has been held by the various judicial forums that whenever any addition and deletion in scrutiny the resulted income is nil then the penalty u/s 271(1)(c) is not leviable. Few instances are given as follows :-

1. B. L. Murarka v Commissioner of Income Tax (2001) 118 Taxman 421 (Raj - H. C.) attached as Annexure no. 7,

2. CIT v Prithipal Singh & Co. (1990) 183 ITR 69 (Punj. & Har. —H. C.) attached as Annexure - 8. This judgement has been upheld by the Honourable Supreme Court.

3. CIT Vs. N. Krishnan (1999) 240 ITR 47 (Ker - H. C.) attached as Annexure - 9.

6. It has been held in the case of Commissioner of Income Tax - IV v Sambhav Media Ltd. (2013) 33 taxmann.com 97 (Guj - H.C.) attached as Annexure - 10 that" Tribunal deleted penalty holding that it was a case of difference of opinion on allow ability of certain deductions and in absence of any material to indicate any dishonest attempt on part of assessee to conceal income, no penalty could be imposed - Whether Tribunal was justified in deleting penalty - Held, yes". It has been held in the case of Discovery Networks Asia Pte Ltd. v ACIT (International Taxation) (2025) 170 taxmann.com 545 (Del - Tub) attached as Annexure - 11 that " Where assessee, a Singaporean company, received advertisement and distribution revenue from its Indian agent and had truly and fully disclosed all material facts of its receipts and assessee was merely contesting taxability of such receipts as royalty or business

income, addition made on difference of opinion could not lead to levy of penalty under section 271(1)(c)." It has been held in the case of Commissioner of Income Tax v S. Kumar Tyres Manufacturing Co. Ltd. (2023) 456 ITR 637 (M.P. - H.C.) attached as Annexure - 12 that" It was noted that Tribunal found that basic information about receipt of compensation was disclosed by assessee and since matter regarding nature of said receipt and year of taxability was debatable, it could not be termed as deliberate attempt of concealment of income on part of assessee for evasion of tax - Assessee had duly disclosed compensation received by it as a capital receipt on basis of opinion given by its tax consultant or Chartered Accountant - Whether, on facts, assessee was not guilty of any violation resulting in imposition of penalty under section 27(1)(c) and, therefore, impugned penalty imposed upon assessee was to be set aside - Held, yes."

In view of the above kindly delete the penalty."

5. On the other hand, the Id. Sr.DR for the revenue relied on the order of Id. CIT(A).
6. We have considered the rival submissions and it is found that the penalty was imposed by the Assessing Officer under Section 271(1)(c) of the Act on the ground that the assessee has shown income under the head rental income and claimed standard deduction @ 30% whereas the Assessing Officer treated this income as business receipts. However, we find from the penalty order passed by the Assessing Officer under Section 271(1)(c) of the Act that the Assessing Officer has not made out a case of concealing of particulars of income or furnishing inaccurate particulars of income. The appellant, on the other hand, has claimed that no material fact or any paper, document, evidence was ever concealed or filed incorrectly on the basis of which it can be said that the assessee has concealed particulars of income under Section 271(1)(c) of the Act. The appellant has also placed reliance on the various decisions mentioned in earlier para of this order (supra) in support of its claim that no penalty is

imposable in his case. We agree with the contention of the appellant that simply because one income has been declared under a different head and assessment was made in some other head, no penalty under Section 271(1)(c) of the Act can be imposed. Thus we direct the Assessing Officer to delete the penalty imposed on the assessee.

7. In the result, this appeal of the assessee is allowed.

Order announced in open court on 09th June, 2025.

Sd/-
(GEORGE MATHAN)
JUDICIAL MEMBER

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Ranchi, Dated: 07/07/2025

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi