IN THE INCOME TAX APPELLATE TRIBUNAL 'PATNA' BENCH, PATNA

BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM

ITA No. 90/PAT/2025
(Assessment Year:2016-17)

Appellant		Respondent
Ashoka Tubewell Boring Engineering & Construction C/o M/s Salarpuria Jajodia & co., 7,C.R. Avenue, 3rd Floor, Kolkata, West Bengal-700072 **(Appellant)**	**Vs.**	**Dy. Commissioner of income Tax, CC-2, Patna** 1st Floor, Central Revenue Building, Bir Chand patel path, patna-800001 **(Respondent)**

PAN No. AAMFA4134H

Assessee by	:	Shri S. Jhajhariya, AR
Revenue by	:	Shri Ashwani Kr. Singal, DR

Date of hearing:	07.07.2025
Date of pronouncement:	18.07.2025

O R D E R

Per Rajesh Kumar, AM:

This appeal preferred by the assessee against the order of the Commissioner of Income Tax, Appeal (hereinafter referred to as the "Ld. CIT(A)"] dated 30.12.2024 for the AY 2016-17.

02. The only issue raised by the assessee in the various grounds of appeal is against the confirmation of penalty by the ld. CIT (A) as imposed by the ld. AO u/s 271(1)(c) of the Act.

03. The facts in brief are that there was a search action on the assessee u/s 132(1) of the Income-tax Act, 1961 (the Act) on 29.10.2010. The assessee is engaged in the business of executing government contracts like roads, water tanks and over bridges, etc. Accordingly,

notice u/s 153A of the Act was issued on 25.11.2021 along with detailed questionnaire which were duly served on the assessee on 04.02.2022. The assessee filed the return of income on 25.03.2022 u/s 153A of the Act, wherein the assessee declared the total income of ₹3,16,08,250/- as against the original returned income of ₹1,16,08,250/- u/s 139(1) of the Act on 26.03.2017. The ld. AO during the assessment proceedings observed that there was a huge gap of income between the income as per return filed u/s 139(1) of the Act vis-à-vis return filed u/s 153A of the Act as the assessee has offered for taxation of ₹2.00 crores as undisclosed income following a disclosure admitted u/s 132(4) of the Act. Consequently, the penalty proceedings were initiated u/s 271(1)(c) of the Act. Similarly, an addition of ₹1,83,640/- also made u/s 68 of the Act in respect unexplained credit. Thus, the penalty proceedings were initiated on a total amount of ₹2,01,83,642/-. The assessee submitted before the ld. AO that the penalty proceedings may be dropped as it was suo motto declared in the return filed u/s 153A of the Act and there was no seizure of any incriminating material qua the said income during search. The plea of the assessee did not find favor with the AO and he, ultimately imposed penalty of ₹69,85,155/- equal to 100% of the tax sought to be added vide order dated 29.09.2022 passed u/s 271(1)(c) of the Act.

04. In the appellate proceedings, the ld. CIT (A) confirmed the said order by holding that there is no perversity in the order passed by the ld. AO as the ld. AO has made out a specific case for concealment of income and imposed the penalty accordingly.

05. The ld. AR vehemently submitted before us that the penalty order passed by the ld. AO is erroneous and may be deleted. The ld. AR

submitted that during the course of search no incriminating material was found or seized qua the said additions. The ld. AR while referring to the assessment order passed by the ld. AO submitted that even the ld. AO in the assessment order has noted that outstanding balance of trade payables has been repaid in working cycles and some of the outstanding balances were paid bill to bill basis. However, upon checking them properly it was found that total amount of liability of ₹2,01,83,643/- was not having corresponding bills and vouchers and therefore, ₹2.00 crores was disclosed by the assessee as additional income and amount over and above to that ₹1,83,642/- was added u/s 68 of the Act. The ld. AR submitted that the assessee has suo motto offered this income in the return filed u/s 153A of the Act and once, the return of income has been accepted, no penalty can be imposed on the income which is offered by the assessee suo motto. The ld. AR therefore, prayed that the order passed by the ld. AO u/s 271(1)(c) of the Act is incorrect and invalid order and may kindly be reversed. In support of his argument the ld. AR relied on the decision of this Tribunal, Guwahati bench in the case of ACIT vs. Brahmaputra metallics Limited in ITA No. 97/GTY/2023 vide order dated 18.10.2024, wherein under similar facts, the penalty in assessee's appeal is deleted by the Hon'ble Bench. The ld. AR, therefore, prayed that the appeal of the assessee may kindly be allowed by following the said decision.

06. The ld. DR on the other had relied heavily on the authorities below by stating that the disclosure was made specifically in relation to the unpaid liabilities in the books of accounts and therefore, there was no question of any incriminating material being seized during the search. The ld. DR stated that these are sufficient reasons and grounds for

initiating and imposing the penalty u/s 271(1)(c) of the Act. Therefore, the order passed by the ld. CIT (A) upholding the order of the ld. AO is correct and may kindly be affirmed.

07. After hearing the rival contentions and perusing the materials available on record, we find that in this case undoubtedly there was no incriminating material found during the course of search qua this income. The assessee made disclosure in respect of outstanding liabilities which were outstanding in the books of accounts of the assessee. We have noticed that in the assessment order there was no discussion by the ld. AO apart from the fact that these disclosures were made in respect of outstanding liabilities for which no bills/ vouchers were available with the assessee. We further note that the income has been disclosed by the assessee in the return filed in response to notice u/s 153A of the Act which has also been accepted by the ld. AO. Then there is no question of concealment of income or/ furnishing of inaccurate particulars of income as has been held by the co-ordinate Bench in the case of Brahmaputra metallics Limited (*supra*). For the sake of ready reference, we reproduce the operative part of the said decision as under: -

> *"5. We have heard the rival contentions and perused the records available on record. We notice that the assessee which is a limited company disclosed loss of ₹54.99 crore (approx.) in the return filed u/s 139(1) of the Act for A.Y. 2015-16 on 13th September, 2015. Thereafter, the assessee which is a part of the Lohia Group of companies was subjected to search and seizure proceedings u/s 132 of the Act carried out on 24th October, 2017. On the basis of the data backup found at the assessee premises, the assessee surrendered additional business income of ₹5 crore. Thereafter, in compliance to notice issued u/s 153A of the Act, assessee after including the additional business income of ₹5 crore, declared the loss in the return at ₹4,99,90,0346/-. The return of income has been accepted by the ld. AO as the assessed income and no additions have been made in the assessment order. However, the ld. AO initiated the penalty proceedings u/s 271(1)(c) of the Act on the surrendered income of ₹5 crore and levied the impugned penalty vide its order dated 25th March, 2022. When the*

matter reached before the first appellate authority, we after considering the facts of the case and examining the same in light of the settled judicial precedence has deleted the impugned penalty. Thought he ld. CIT (A) has referred to the plethora of decision we take note of the following decisions: -

> *"in the case of DCIT vs. Purti Sakhar Karkhana {{2013) 23 ITR (Trib.} 667 (Nagpur)], it was held by the Hon'ble ITAT Nagpur that a return in response to a notice under Section 153A/153C of the Income Tax Act, 1961 is required to be furnished, in the prescribed form, verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of Income Tax Act, 1961, so far as may be, apply accordingly as if it was a return required to be furnished under Section 139 of the Act. Therefore, in an assessment completed under Section 153A/153C read with Section 143(3) of the Act, any concealment has to be judged with reference to the return of income filed in response to a notice under Section 153A/153C of the Act. Thus, if there is no variation in the income shown in the return filed under Section 153A and the assessment made, no penalty is leviable under Section 271(1)(c) of the Act.*
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> *In the case of Kirit Dahyabhai Patel vs. ACIT [(2017) 80 taxmann.com 162 (Gujarat}], it was held, as follows, by the Hon'ble Gujarat High Court:*
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> > *"In view of specific provision of section 153A, the return of income filed in response to notice under section 153A is to be considered as return filed under section 139, 'as the Assessing Officer has made assessment on the said return and, therefore, the return is to be considered for the purpose of penalty under section 271{1){c} and the penalty is to be levied on the income assessed over and above the income returned under section 153A, if any.*
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> *In the case of Pr. CIT vs. Neeraj Jindal [(2017) 393 (TR 1 {Del)], it was held, as follows, by the Hon'ble Delhi High Court: -*
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> > *The levy of penalty under section 271(1)(c} of the Income-tax Act, 1961, is not automatic. For levy of penalty under section 271(1)(c) , the conditions laid out therein have to be specifically fulfilled. Section 271(1)(c) of the Act, being in the nature of a penal provision, requires strict construction. The word "conceal" in section 271{1)(c} would require the Assessing Officer to prove that specifically there was some conduct on the part of the assessee which would show that the assessee consciously intended to hide his income. When an assessee has filed revised returns after a search has been conducted, and such revised returns have been accepted by the Assessing Officer, merely by virtue of the fact that such return showed a higher income, penalty under section 271(1)(c) _cannot _be automatically.*

> *imposed. Considering that the non obstante clause under section 153A excludes the application, inter alia, of section 139 it is clear that the revised return filed under section 153A_takes the place of the original return under section 139, for the purposes of all other provisions of the Act. Thus, it is clear that when the Assessing Officer has accepted the revised return filed by the assessee under section 153A, on occasion arises to refer to the previous return filed under section 139 of the Act. For all purposes, including for the purpose of levying penalty under section 271{1)(c) of the Act, the return that has to be looked at is the one filed under section 153A."*

In the case of Sunil Satija vs. ACIT [017 (12) TMI 473 - ITAT DELHI], it was held, as follows, by the Hon'ble ITAT Delhi:

> *"Penalty under Section 271(1){c) - Survey operations under Section 133A (1) (conducted simultaneously in the premises of some of the members of the group and Assessment under Section 153A(1)(b} completed - 'undisclosed income' was declared by the appellant in the statement recorded during search and the same - was also disclosed in the return filed pursuant to notice issued under section 153A –*
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> *Held that:- We find that there cannot be any dispute to the fact that once a return s filed pursuant to notice under section 1534, the same s treated as return filed under section 139 of the Act [refer clause (a) of section 153Afl}]. Further, concealment/ furnishing of inaccurate particulars of income/undisclosed income, has to be necessarily seen vis-a-vis return filed by the appellant Once, income it is declared which is accepted as such under section 139 r.w.s. 153A of Act, then, the question of there being concealment/_furnishing of inaccurate particulars of income/undisclosed income, does not grise at all,*
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> *In the present case, the entire undisclosed income has been offered for tax by the appellant-company in the return income, which was subject matter of assessment before assessing officer. The return filed by the appellant has been accepted as such by your assessing officer, without any variation. Therefore, in the absence of any undisclosed income being found in the assessment vis-a-vis the return filed, the Issue of imposition of penalty does not, arise. - Decided in favor of assessee.""*

6. From perusal of the above judgements, we noticed that it has been consistently held that return filed in response to notice u/s 153A of the Act is to be considered as return filed u/s 139 of the Act. Further, concealment of particulars of income or furnishing of inaccurate particulars of income / undisclosed income has to be seen vis-a-vis return filed by the appellant and once the income declared in the return u/s 139 read with 153A of the Act, is

accepted as such in the assessment u/s 143(3) read with section 153A of the Act then the question of there being concealment / furnishing of inaccurate particulars of income does not arise at all.

7. We further observe that similar issue came for adjudication before this Tribunal in the case of Hitech Construction (supra), in which also examining the issue of levy of penalty u/s 271(1)(c) of the Act on the undisclosed income offered to tax in the return and the same being accepted by the ld. AO, levy of penalty u/s 271(1)(c) of the Act was not held to be justified and finding of this Tribunal, read as under: -

> *"9. We have heard rival contentions and perused the records placed before us. Revenue is aggrieved with the finding of ld. CIT(A) deleting the penalty levied u/s 271(1)(c) of the Act for AY 2014-15 & AY 2015-16 and penalty levied 271AAB(1)(a) of the Act for AY 2016-17. As far as penalty levied u/s 271(1)(c) of the Act for AY 2014-15 & AY 2015-16 is concerned we find that ld. CIT(A) has deleted the penalty observing as follows (relevant extract):*
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> > *"It has been contended by the Appellant that the impugned penalty has been imposed merely on the basis of estimated addition and that taxes were paid on the same by the Appellant to avoid litigation and to buy mental peace. It is also clear that no incriminating material regarding the purported additional income was found by the department during the course of search and seizure operations conducted by the department. Despite this very important fact, the Appellant chose to offer such income for tax. It is also clear that such income was offered for tax by the Appellant only by way of a statement/letter of the Appellant on the free will and admission of the Appellant as evident from the relevant assessment order. Thus, it can be said that the offer of the said income for tax by the Appellant was purely voluntary. It is also clear that after such additional income was offered for tax by the Appellant through the said statement of the Appellant, honouring the statement so made and offering such income for tax, no retraction of such statement was made by the Appellant either before the Investigation Wing or before the A0. Even at the time of filing the return of income under Section 153A of the Act, after the date of search, the Appellant, dutifully declared such income in the said return and paid the admitted taxes on the same. It is also a relevant fact that in many cases, under subsequent legal counsel, the statements made by various assessees are retracted. Thus, no such intention transpires on the part of the Appellant to retract the voluntary statement so made.*

Thus, no intention transpires on the part of the Appellant to not pay the amount of tax due to the exchequer. The law on Section 153A/153C is settled (read Judgment of Hon'ble Delhi high court in the case of Kabul Chawla) that no additions during the assessments pertaining to search cases can be made on any account until and unless some incriminating material on that account has been recovered by the Department. It is a settled proposition and requires no authority to bring home the contention that no penalty can be levied when the additions have been made merely on estimated basis. It cannot be said that the Appellant did not have access or could not have had to appropriate legal advice. Despite that there was no intention on the part of the Appellant to contest the additions pertaining to the income offered to tax, sans any incriminating material and not pay the amount of tax due to the exchequer.

In this regard, it would also be relevant to peruse Section 271(1)(c) of the Income Tax Act, 1961, which is reproduced as hereunder:

"271. (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-

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or...... he may direct that such person shall pay by way of penalty, ..."

Thus, it is clear that Section 271 uses the word "'may" and not "shall". The word "may" cannot be equated with "shall" especially in penalty proceedings. Using the word may which is discretionary in nature, gives a discretion to the assessing officer to levy or not to levy the penalty even if the assessee had made some default under the said provision. Whether any penalty should be imposed for failure to perform a statutory obligation is a matter of discretion to be exercised judicially and on consideration of all relevant circumstances.

It may be stated that words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. Therefore, it is necessary to ascertain the intention. Even if it is assumed that the word "shall" had been used in the aforesaid provision, the word "shall" is also not always decisive. Regard must be made to the

context, subject matter and the object of the statutory provision in question in determining whether the same is "mandatory" or "directory". No universal principle of law can be laid in that behalf as to whether a particular provision or enactment shall be considered "mandatory" or "directory". It is the duty of the Court to try to get at the real intention of the legislature by carefully analyzing the whole scope of the statute or the section or the phrase under consideration. As stated earlier, the question as to whether the statute or the provision is "mandatory" or "directory", depends upon the language in which the intent is couched. However, in this case, the words "may" has been used which undoubtedly gives a judicial discretion to the Ld. AO to impose the penalty but only after judicially exercising the discretion of imposing the penalty on consideration of all relevant circumstances and evidences on record.

Looking at the conspectus of the case of the Appellant, wherein, no incriminating material found by the Department during the course of search and seizure operation has been referred in the relevant assessment order as well as in the impugned penalty order, such income was offered for tax by the Appellant voluntarily through the statement recorded, honoring the statement so made the Appellant offered such income for tax, no retraction of such statement was made by the Appellant, the Appellant dutifully declared such income in the subsequent return under section 153A and paid the admitted taxes on the same, it cannot be said that there transpired any intention on the part of the Appellant of hiding any such income from the Department or to not pay the amount of tax due to the exchequer or that the conduct of the Appellant was contumacious and there was an intention to evade any tax. In that scenario, the discretion which vested in the AO for imposition of penalty should have been exercised in favour of the Appellant.

It is settled law that any imposition of penalty under the Income Tax Act, 1961 is discretionary and not mandatory and whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion to be exercised judicially and on consideration of all relevant circumstances. Thus, penalty should not be imposed mechanically but must be based on the facts and circumstances of each case.

It is also an admitted position of law that penalty proceedings are distinct and separate from assessment

proceedings. The Hon'ble Calcutta High Court in the case of Durga Kamal Rice Mills Vs. CIT [(2004) 265 ITR 25 (Cal.)] has held that quantum proceedings are different from penal proceedings. The Hon'ble Kerala High Court in the case of CIT vs. P.K. Narayanan [(1999) 238 ITR 905 (Ker.)] has held that despite the addition being confirmed by Tribunal in quantum proceedings, the penalty can still be deleted by the Tribunal, if the facts so justify.

Penalty can be based on the material which was used by the Ld. A0 while making the assessment. Even if there is a legal proposition that penalty was an additional tax imposed on an assessee for his contumacious conduct and, therefore, was no different from tax, this tax must have evidence to back up its imposition justified by the contumacious conduct of the taxpayer. In the instant case, nothing from record remotely reflects the "contumacious" conduct of the Appellant making the instant case a fit case for imposition of penalty. In the case at hand, no evidence regarding the factum of tax being concealed with a motive to evade taxes was unearthed by the Ld. AO or the Investigation Wing of the Department. There was not even any false explanation given by the Appellant which was suggestive of the fact that the Appellant wanted to deliberately evade any taxes. Even though it cannot be said that the penal proceedings under the Income tax Act, 1961 are in the nature of criminal proceedings and a higher degree of probability of the assessee being guilty of the charge needs to be applied in the case of penalty proceedings, but it can be certainly said that penalty would definitely need a different approach than what is required in the case of assessment proceedings. The facts and circumstances of an Appellant's case in a penal proceedings need to be looked and judged at from a different point of view altogether than the one which is done in the case of assessment proceedings. Suppose there is a case of a law-abiding taxpayer who inadvertently omits to pay due taxes on a particular receipt. No doubt he is liable for paying the due taxes on that receipt but should he be additionally penalized for his inadvertence just because the Act stipulates the imposition of penalty? That is a difficult question to answer. There can be mechanical imposition of tax on a particular receipt or expense which should have been taxed but there cannot be a mechanical imposition of penalty in such a situation. This also leads to the matter of explanations given by the assessees in support of their contentions. Even if any assessee is not able to establish,

by satisfactory evidence, the source of any income, it does not mean that the explanation furnished was false or that the assessee is guilty of deliberate suppression. Generally, a 'penalty' means a sum of money recoverable in a summary manner, for breach of some statutory provision. A penalty is provided for by a statute to punish a contravention of a statute or the doing of something which is prohibited by the statute. In order to enforce the mandatory provisions of a statute, the Legislature may impose sanctions of either of two kinds i.e. either declare it as an "offence" under the general law of crimes and make the person guilty of such offence punishable judicially or alternatively provide that the contravention will be punishable extra-judicially, by the prescribed administrative authority by way of a penalty. Any penalty falls in the latter case. So, a penalty may have slight affinity to a criminal offence in the sense that there is an offence in the broader sense, namely, a contravention of the mandate of the law and there is a punishment provided for such offence and the charge for which the punishment is awarded is that the statute has been contravened, either by doing what was prohibited or by omitting to do what was required to be done by the statute. Offence is used to refer to what is punishable as a "crime" on prosecution before a Court of Law, but in the case of what is popularly known as a "statutory offence", there is nevertheless an offence which is punishable by the law, though by a different tribunal or an administrative authority. Thus, anything "penal" comprises "not only prosecutions and sentences for crimes and misdemeanour, but all suits in favour of the State for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue or other municipal laws, and all judgments for such penalties." In the case of a statutory offence, if the assessee must furnish a return and that with correct particulars of his income and if he further conceals the particulars or deliberately furnishes inaccurate particulars or tries to hide any income, then only a penalty prescribed in the statute is attracted. It may safely be concluded that the "additional tax" imposed by way of penalty is nothing but a punishment for a statutory offence and that instead of judicial punishment, the statute prescribes for a penalty being awarded by the Revenue authority in question. In the case of a statutory penalty, the proceeding to make such imposition is, however, not a penal or criminal proceeding. However, in the case of a penalty, in accordance with the principles of natural justice, the person charged must have a

reasonable opportunity of meeting such charge and the onus of establishing the ingredients of the penalty lies on the authority seeking to punish the person and that a penalty cannot be awarded unless this onus is discharged by the authority.

In this case, it cannot be said that the Appellant deliberately concealed the particulars of income or deliberately furnished inaccurate particulars of income or had hidden any of its income, even from the assessment order, it does not appear that the Appellant had deliberately concealed his income or furnished inaccurate particulars of income or hide any of its income. No evidence of concealment of particulars of income or furnishing of inaccurate particulars of income has been adduced, either by the Ld. AO during the course of assessment proceedings or by the Investigation Wing of the Income Tax Department in their investigations prior to the assessment proceedings, which could conclusively prove concealment of particulars of income or furnishing of inaccurate particulars of income by the Appellant. In the impugned penalty order or the assessment order, there is no shred of reference to any incriminating material whatsoever which was seized or recovered by the Investigation Wing either during the course of search proceedings or even later at the time of recording of the Statement under Section 132(4) of the Income Tax Act, 1961 and which was used by the Ld. AO for framing the assessment order and making the additions in the assessment order. The entire construction of the assessment order rests only on the bald edifice of a Statement recorded under Section 132(4) of the Income Tax Act, 1961 in which the Appellant voluntarily and suo-motto disclosed the income. To sustain any penalty tangible evidence has to be brought on record to foist some culpability on the Appellant.

In view of the above, (a) in the absence of anything incriminating against the Appellant being on record, (b) no evidence being on record that there was any contumacious Conduct on the part of the Appellant to conceal particulars of income or an attempt to hide something or an attempt to evade taxes, (c) no incriminating evidence having been found or recovered against the Appellant during the course of search operation and (d) the bona-fides of the Appellant being evident from record by way of suo-motto disclosure without the Revenue even possessing any minutes of documentary evidence against the Appellant, there is no

reason for the undersigned to sustain the penalty, which has been applied mechanically, in the instant case."

10. From perusal of the above finding of ld. CIT(A) we notice that the basis for the deletion of penalty is that no incriminating material was found or recovered during the course of search and the assessee has made the voluntary disclosure, paid due taxes and cooperated in the income tax proceedings and ld. AO failed to make out a case that the alleged penalty is on account of any incriminating material found during the course of search on the basis of which the assessee has declared additional income. At this juncture, we would like to refer to the decision of Coordinate Bench of Ahmedabad in the case of Guruprasad Infrastructure Pvt. Ltd. vs. DCIT [2019 (7) TMI 1549-ITAT Ahmedabad] where the head note of this decision considering similar issues reads as follows:

> *"Penalty u/s 271(1)(c) - income returned & accepted by AO in order passed u/s 153 A r w s 143 (3) - HELD THAT: - There was no reference made to any incriminating document found during the search. Therefore, we are of the view that the addition of undisclosed income was based on the statement furnished under section 132(4) of the Act.*
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> *At the time of the hearing, a query was raised to the Ld. DR whether the assessee disclosed the income in pursuance to the search based on the incriminating document, but he failed to bring any material on record. Therefore, in the absence of any documentary evidence, we infer that the income disclosed by the assessee was not based on the incriminating materials.*
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> *Penalty under Explanation 5A to section 271(1)(c), the of the Act can be attracted if the assessee was found to be the owner of any money, bullion, jewellery or other valuable article or thing or any income based on any entry in any books of account or other documents or transactions.*
>
> *But, in the case on hand, there was no such allegation against the assessee either in the assessment or penalty or the CIT (A) order referring to any specific incriminating documents.*
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> *As relying on Ajay Traders Vs. DCIT [2016 (6) TMI 422 - ITAT JAIPUR] there cannot be any penalty under explanation 5A to section 271(1)(C) of the Act until and unless the quantum addition is based on some*

incriminating document. Accordingly, we hold that there cannot be any penalty under section 271(1)(C) of the Act in the given facts and circumstances. - Decided in favour of assessee.

11. Similar was the view taken by Coordinate Bench of Delhi in the case of Rishabh Buildwell P. Ltd vs. DOT [2019 (7) TMI 383 - ITAT DELHI] reads as under:

"Penalty u/s. 271(1)(c) - income disclosed by the assessee under Section 153A - assessee has filed revised returns disclosing higher income than in the original return - HELD THAT: - AO has not brought anything on record to assess any income over and above the returned income filed by the assessee. AO in the assessment order could not bring into fore as to how the seized material has been analyzed and to prove as to how the concealment or furnishing of inaccurate particulars of income has arisen.

Though the assessing officer has mentioned the word "Addition" it does not represent any adding up of the income but narration of the income returned by the assessee in response to notice u/s 153A of the Act

There was no addition made by the AO. There is no deeming fiction for the levy of penalty the provisions applicable whether it is an assessment u/s 153A or assessment u/s 143(3) or u/s 148 the provision essentially remain the same. In the instant case, the assessee has filed return of income declaring additional income which was accepted by the AO.

Hence, they cannot be treated as the assessee has concealed income as concealment as to be dealt by the Revenue by way of unearthing sum of the income which has been kept away from the eye of the Revenue. Furnishing of inaccurate of particulars refers to filing of material which is not in conformity with the facts or truths

The mere fact that the assessee has filed revised returns disclosing higher income than in the original return, in the absence of any other incriminating evidence, does not show that the assessee has "concealed" his income for the relevant assessment years. Considering that the non-obstante clause under Section 153A excludes the application of, inter alia, Section 139, it is clear that the revised return filed under Section 153A takes the place of the original return under Section 139, for the purposes of all other provisions of the Act.

> > *No difference between returned income and the assessed income, keeping in view the fact that the Revenue has not brought any material for levy of penalty - return filed in response to notice 153A of the Act needs to be treated as returned filed u/s 139 of the Act for the purpose of assessment, we hereby delete the penalty levy u/s 271(l)(c) of the Act.*
> >
> > *Penalty levied u/s 271AAB - Assessee has given a statement u/s 132(4) of the Act during the search and substantiated as to how the undisclosed income was derived (para 4.1 of AO), paid the taxes and filed the return. Hence, the assessee had made all the required conditions. At this juncture, it is to be adjudicated whether the levy of penalty is automatic or not under the present circumstances, we find that the rationale given in the case of 271(1)(c) so as to the requisite conditions for levy of penalty under the Income Tax law are equally applicable to the instant year also. Hence, the penalty levied is directed to be deleted. - Assessee appeal allowed."*
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> *12. Thus, respectfully following the judicial precedence and also considering the fact that the additional income offered by the assessee in the return filed in compliance to the notice u/s 153A of the Act which partakes the character of regular income filed u/s 139 of the Act and the said additional income being not offered on the basis of any incriminating material but is the voluntary disclosure made by the assessee and there being no other legal binding precedence referred to by ld. D/R, we fail to find any infirmity in the finding of ld. CIT(A) deleting the penalty levied u/s 271(1)(c) of the Act for AY 2014-15 & AY 2015-16, respectively. Thus, the grounds of appeal raised by the Revenue in ITA Nos. 133 & 134/GTY/2020 are dismissed.*

8. We find that the above decisions of this Tribunal in Hitech Construction (supra) is squarely applicable on the facts of the case of the assessee. ©. DR has failed to bring forth any other binding precedence in its favour before us. Under the given facts of the case we observe that the surrendered income of ₹5 crore was calculated on estimated basis on unrecorded sales and there is no specific incriminating material indicating the alleged income surrendered by the assessee. Further, surrendered income stated in the statement recorded u/s 132(4) of the Act has been offered to tax in the income tax return and the same stands accepted by the Assessing Officer. It is also noticed that the assessee had declared loss of ₹54.99 crore in the original return filed on 30th April, 2019 and even after surrendering the undisclosed income of ₹5 crores, the ©. © has accepted the income of the assessee at a loss of ₹44.99 crore. We therefore, fail to find any infirmity in the finding of the ©. © (A) deleting the impugned penalty u/s 271(1)(c) of the Act on duly examining the facts of

the case in light of the settled judicial precedence. The sole ground of appeal raised by the Revenue is dismissed.

9. In the result, the appeal of the Revenue in ITA No. 97/GTY/2023 is dismissed."

08. Since, the facts of the case are materially same before us vis-à-vis, the facts of the case as decided by the co-ordinate bench (*supra*), therefore, we are inclined to set aside the order of ld. CIT (A) and direct the ld. AO to delete the penalty.

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

Order pronounced in the open court on 18.07.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 18.07.2025
Sudip Sarkar, Sr.PS
Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Patna