

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.36/SRT/2024

Assessment Year: (2015-16)

(Hybrid hearing)

M/s Khodiyar Organisers, Central Plaza, Near Om Terrace, New City Light Road, Surat – 395007, Gujarat	Vs.	ACIT, Circle – 2(3), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAKFK1498A		
(Appellant)		(Respondent)

Appellant by	Shri P. M. Jagasheth, CA
Respondent by	Shri Ajay Uke, Sr. DR
Date of Hearing	21/07/2025
Date of Pronouncement	13/08/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 ('in short, the Act') dated 27.12.2023 by the Commissioner of Income-tax (Appeal) - 11, Ahmedabad [in short 'the CIT(A)'] for the assessment year (AY) 2015-16.

2. The grounds of appeal raised by the assessee are as under:

"1. On the facts and in the circumstances of the case as well as the law on the subject, the Ld. CIT(A) has erred in confirming the action of levying penalty of Rs.32,30,543/- u/s 271(1)(c) of the Income tax Act, 1961.

2. It is, therefore, prayed that the above addition may please be deleted as learned members of the tribunal may deem it proper.

3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal."

3. Brief facts of the case are that the assessee filed its return of income on 29.09.2015 for AY 2015-16, declaring total income of Rs.19,44,960/-. There was a survey u/s 133A of the Act on 20.01.2016, during the course of which the partner of the firm admitted on-money of Rs.93,27,575/- and disclosed the same for taxation. Subsequently, the assessee filed its revised income on 29.02.2016, declaring total income of Rs.1,12,72,540/-. The case was selected for scrutiny under CASS. After hearing the assessee, order u/s 143(2) of the Act was passed on 29.09.2017, accepting the income as per the revised return. However, the Assessing Officer (in short, 'AO') initiated penalty proceeding u/s 271(1)(c) of the Act for concealment of Rs.93,27,575/-.

4. During the penalty proceedings u/s 271(1)(c) of the Act, the appellant submitted that it had filed revised return of income on 20.02.2016 much before the notice u/s 143(2) of the Act was issued on 20.09.2016. The appellant had voluntarily filed its revised return of income and paid taxes with the interest on the revised income. The AO has not made any addition. The appellant had relied on various decisions, but the AO did not accept the claim of assessee by observing that the on-money disclosed over and above the regular income in the revised returned income means assessee had deliberately concealed such income and admitted the same during survey

u/s 133A of the Act. Accordingly, the AO levied penalty of Rs.32,30,543/- u/s 271(1)(c) of the Act on 19.03.2018.

5. Aggrieved by the penalty order, the assessee filed appeal before the CIT(A). During appellate proceedings, it was observed by CIT(A) that appellant had filed revised return of income in pursuance of survey proceedings, declaring income of Rs.1,12,72,540/-, wherein he disclosed additional unaccounted income of Rs.93,27,575/-. It was held that if survey proceedings u/s 133A of the Act had not been conducted by the department, the appellant would not have disclosed any additional unaccounted income. Thus, it was concluded that the appellant had disclosed additional unaccounted income, consequent upon the incriminating documents related to 'on money' receipt found during the course of survey proceedings. The CIT(A) has relied on the following decision, viz., Snita Transport Pvt. Ltd. vs. ACIT, 42 taxmann.com 54 (Guj.), AM Shah & Co. vs. CIT, 238 ITR 415 (Guj.), Bharatkumar G. Rajani vs. DCIT, 40 taxman.com 344 (Guj.), CIT vs. Vidyagauri Natvartlal, 238 ITR 91 (Guj.), Chemmanchery Estate Co. vs. ITO, 111 taxmann.com 66 (Mad.) and CIT vs. N. Jayprakash, 99 taxmann.com 443 (Ker.). Accordingly, the CIT(A) dismissed the appeal of the assessee.

6. Aggrieved by the order of CIT(A), the assessee filed appeal before this Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted that the assessee filed revised return u/s 139(5) of the Act within the time allowed under the Act. The assessee had also paid the tax and

interest on the income disclosed in the revised return. The notice u/s 143(2) of the Act was issued much after the filing of the revised return. There is no addition over and above the income declared in the revised return. Hence, there was no concealment of income necessitating levy of penalty u/s 271(1)(c) of the Act. The Id. AR relied on the following decision, viz., PCIT vs. Prabhjot Kaur Chhabra, 113 taxmann.com 141 (SC), PCIT vs. Gujarat State Electricity Corporation Ltd., R/Tax Appeal No.338 of 2022, dated 06.09.2022, PCIT-19 vs. Neeraj Jindal, 79 taxmann.com 96 (Del.), CIT vs. Sas Pharmaceuticals, 11 taxmann.com 207 (Del.), CIT vs. Vega auto Accessories (P.) Ltd., 26 taxmann.com 335 (Kar.), DCIT vs. Milestone Developers, ITA No.2961/Ahd/2016 (Surat – Trib.), DCIT vs. Dr. Satish B. Gupta, 42 SOT 48 (Ahd – Trib.), ACIT vs. Jupiter Distrillery, 23 taxmann.com 303 (Ahd – Trib.), Harikrishna Silk Mills vs. ACIT, 107 Taxman 78 (Ahd – Trib.), DCIT vs. NBM Iron & Steel Trading Pvt. Ltd., ITA No. 205/Ahd/2022 (Ahd – Trib.), R. Umedbhai Jewellers Pvt. Ltd. vs. DCIT(OSD), ITA No.221/Ahd/2015 (Ahd – Trib.), Vipul Life Sciences Ltd. vs. DCIT, 57 taxmann.com 25 (Mum – Trib.), Muninaga Reddy vs. ACIT, 37 taxmann.com 440 (Bang – Trib.), Vasavi Shelters vs. ITO, 32 taxmann.com 26 (Bang – Trib.) and Raghuram Hume Pipes Pvt. Ltd. vs. ACIT, ITA No.233/VTJ/2024 (Vizag – Trib.).

7. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the orders of lower authorities. He submitted that the income included in the revised return was not declared in

the original return and, hence, penalty was rightly levied by AO and sustained by the CIT(A).

8. We have heard both the parties and perused the materials available on record. We have also deliberated on the decisions relied upon by both sides. The basic details are as under: (i) original return was filed on 20.09.2015, (ii) survey u/s 133A of the Act was conducted on 20.01.2016, (iii) the revised return was filed on 29.02.2016 and (iv) notice u/s 143(2) of the Act was issued on 20.09.2016. Hence, there is no dispute regarding the fact that pursuant to the survey action u/s 133A of the Act, the assessee admitted receipt of unaccounted on-money of Rs.93,27,575/- and disclosed the same over and above its income for AY 2015-16 in its revised return of income. Subsequently, the case of the assessee was selected for scrutiny under CASS and notice u/s 143(2) of the Act was issued on 20.09.2016 and served to the assessee. It is, therefore, clear that the assessee revised its return of income well before the issuance of notice u/s 143(2) of the Act. After hearing, the assessment was completed u/s 143(3) of the Act by the AO duly accepting the revised return of income.

8.1 Against the above factual positions, let us decide whether penalty was leviable u/s 271(1)(c) of the Act. The assessee had filed revised return of income u/s 139(5) of the Act within the time allowed under the Act. It has been held by various Hon'ble Courts that once a revised return is filed, the original return must be taken to have been withdrawn and to have been

substituted by a fresh return for the purpose of assessment [Dhampur Sugar Mills vs. CIT, 90 ITR 236 (All.), CCIT vs. Machine Tools Corporation India Ltd., 67 Taxman 363 (Kar.), **approved** in CIT vs. Mahendra Mills/Arun Textile 'C'/Humphreys/Glassgow Consultants, 109 Taxman 225 (SC)]. In the instant case, the aforesaid statutory right to file the revised return of income was exercised by the assessee much before the selection of his case for scrutiny and issuance of notice u/s 143(2) of the Act. No rationale is seen to levy penalty u/s 271(1)(c) of the Act when there is no difference in the return of income and assessed income. On careful perusal of Explanation - 1 to Section 271(1), it may be seen that it is only the addition or disallowance to the total income that would represent the income for the purpose of levy of penalty within the meaning of Explanation – 1 to section 271(1)(c) of the Act. In other words, if no addition or disallowance is made in computing the total income, then there will not be any income, which can be deemed as income in respect of which particulars have been concealed. The very basis for levy of penalty is return of income. If any amount has been shown in the return of income, then it cannot be said that assessee has concealed any particular about that income or furnished inaccurate particulars in relation thereto. There cannot be any concealment prior to filing of return. Question of consideration whether assessee is liable for action u/s 271(1)(c) of the Act would arise only when return of income is scrutinized by the AO and he finds

some more items of income or additional income over and above what is declared in the return.

8.2 Reliance in this regard is placed on the case of Pr. CIT vs. Prabhjot Kaur Chhabra [(2020) 113 taxmann.com 141 (SC)], wherein the Hon'ble Supreme Court dismissed the SLP filed by the revenue against the decision of the High Court, which held that when the assessee had made voluntary disclosure in the return and paid taxes thereon, mere fact of such disclosure being consequent to survey action cannot be a ground to attract penalty under section 271(1)(c) of the Act.

8.3 Reliance is also placed on the Delhi High Court decision in the case of PCIT vs. Neeraj Jindal, 79 taxmann.com 96 (Delhi), wherein the assessee disclosed unaccounted income in the return filed post-survey and paid taxes accordingly. The Court held that when an assessee had filed revised returns after search had been conducted and such revised return had been accepted by the AO, then merely by virtue of the fact that such return showed a higher income, penalty under section 271(1)(c) of the Act cannot be automatically imposed.

8.4 The ITAT, Surat also, in group cases of Milestone Developers (supra), upheld deletion of penalty u/s 271(1)(c) of the Act by the CIT(A). In the said case, the AO has levied the penalty by holding that the amount disclosed in the survey and included in the income of the assessee was afterthought. The ITAT, Surat held that the income offered in the survey was duly declared in

the return of income and assessment was accordingly framed. The assessment u/s 143(3) of the Act was passed accepting the declared income. There was no difference in the return of income and assessed income. The Tribunal held that if any amount has been shown in the return of income, then it cannot be said that the assessee concealed particulars about that income or furnished inaccurate particulars in relation thereto. The Tribunal relied on various decisions and held that no penalty is leviable and, accordingly, appeal of revenue was dismissed.

9. It is an undisputed fact that in the present case, assessee filed a revised return of income declaring additional income and paid taxes thereon. This was done before the notice u/s 143(2) of the Act was issued or the assessment was completed. The income disclosed was not subsequently unearthed or disputed by the AO. The assessee not only admitted the income during the survey but also disclosed the same in the revised return and offered it to tax. There is no material brought on record by the AO to show that the assessee attempted to mislead or suppress the facts, or that the disclosure made was not true and complete. The entire amount of on-money was offered and accepted in assessment proceedings without any further additions. In view of the above facts and binding precedents, we are of the considered opinion that the penalty levied under section 271(1)(c) of the Act in the present case is not sustainable in law. The assessee, having made a bona fide disclosure in the revised return and paid due taxes, cannot

be said to have concealed income or furnished inaccurate particulars. Accordingly, ground Nos.1 & 2 are allowed and the penalty levied u/s 271(1)(c) of the Act is deleted.

10. Ground No. 3 is general in nature, hence does not require adjudication.

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

Order is pronounced in accordance with Rule 34(3) of the ITAT Rules, 1963 on 13/08/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 13/08/2025

SAMANTA

Copy of the Order forwarded to:

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

By Order

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Assistant Registrar/Sr. PS/PS
ITAT, Surat