

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE MS.SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER&  
SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No.913/SRT/2024

Assessment Year: 2012-13

(Hybrid hearing)

Smt. Kamuben Ramanlal Patel House No.1, Varkund, Mithanagar, Nani Daman, Daman and Diu-396 210	बनाम/ Vs.	Income Tax Officer, Daman, Income Tax Department, Jeevanji Hotel Building, Kathiria Road, Nani Daman, Daman and Diu- -396210
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ACPK1885N		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारितीकीओरसे/Appellant by	Shri Hemant Suthar, CA
राजस्वकीओरसे /Respondent by	ShriAjay Uke, Sr. DR
सुनवाई की तारीख/Date of Hearing	17/07/2025
उद्घोषणा की तारीख/Date of Pronouncement	25/09/2025

**आदेश / ORDER**

**PER BIJAYANANDA PRUETH, 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 12.06.2024 by the National Faceless Appeal Centre, Delhi/Commissioner of Income-tax (Appeals) [in short 'Ld. CIT(A)'] for the Assessment Year (AY) 2012-13 in levying 100% penalty of Rs.52,46,160/- imposed u/s 271(1)(c) of the Act by Assessing Officer on 11.01.2021. Grounds of appeal raised by the assessee are as under:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) erred in dismissing the appeal filed by appellant against the AO order u/s 271(1)(c) of the Act for unintentional and arithmetical mistake.*
2. *The Learned CIT(A) had dismissed appeal filed by appellant against the AO order u/s 271(1)(c) of the Act without considering detailed*

*submission and also without giving any opportunity of videoconferencing before passing order as requested by appellant.*

3. *Your appellant craves to add/alter any grounds of appeal on or before the date of final hearing.”*

2. The appeal filed by the assessee is barred by limitation by 11 days in filing of this appeal. An application for condonation of the delay has been filed by the appellant along with an affidavit. After considering the application and hearing both the parties, we condone the delay and admit the appeal for hearing.

3. Vide application dated 27.02.,2025, assessee filed following additional ground:

*The Ld. AO has erred in law and in facts in not appreciating the fact that the Ld. AO has in the notice proposing the penalty as required u/s.274 has not specified the charge for the levy of penalty as to for concealment of income or for furnishing inaccurate particulars. Moreover, Ld. AO has levied penalty on dual charges of concealment of income and furnishing of inaccurate particulars of income against the provisions of law. The levy of penalty in the aforesaid manner, in the humble opinion of the appellant, being bad in law, deserves to be cancelled.*

*The appellant submits to your honour that the above ground is a legal claim arising out of the impugned order of the Ld. AO and Ld. CIT(A). Specific ground as above is inadvertently omitted. Hence, the appellant may be permitted to raise the same for adjudication.*

*Reliance is placed on the ratio of following judgment s for admission of the additional ground:*

- *Jute Corporation of India Ltd. vs. CIT 187 ITR 688 (SC)*
- *National Thermal Power Co. Ltd. vs. CIT 229 ITR 383 (SC)*

*The appellant prays to your honour that proper justice would be done to the appellant if the ground above referred is also adjudicated and, therefore, same is prayed to be admitted and the appellant be permitted to agitate the aforesaid additional ground.”*

2.1 Since the additional ground pertains to legal issue and goes to the root of the matter and since the details are available on record, the same is admitted in view of the decisions of the Hon'ble Supreme Court in the cases of NTPC (supra) and Jute Corporation India (supra).

4. Facts of the case in brief are that the appellant is a senior citizen and was engaged in the business of manufacturing and selling salt pans and also carried on the business of running tempo on hire basis. During the year under consideration, the appellant had sold ancestral land at Varkund, Nani Daman, UT of Daman & Diu for the sales consideration of Rs.10,00,00,000/-. The assessee filed her return of income on 30.03.2013 declaring the total income at Rs.6,00,230/-. The scrutiny assessment in case of assessee was completed u/s.143(3) of the Act on 30.01.2015 determining total income at Rs.7,79,56,910/- after making addition of Rs.7,73,56,675/- on account of LTCG and raising demand of Rs.2,24,80,170/-. Along with this, the AO also initiated penalty proceedings for concealment of income and furnishing inaccurate particulars of income u/s.271(1)(c) of the Act. The assessee had filed an appeal before the CIT(A) against the impugned assessment order. The CIT(A) vide order dated 04.01.2016 dismissed the appeal of the assessee. The AO, therefore, levied penalty of Rs.1,59,35,500/- u/s.271(1)(c) of the Act, observing that the assessee had furnished inaccurate particulars of income which led to concealment of income. In the meanwhile, the assessee had filed appeal against the quantum addition before the ITAT which partly allowed the appeal

of the assessee. Upon receiving the order of ITAT, quantum demand was reduced to Rs.58,13,630/-. The assessee requested AO to give effect to the order of the Tribunal and reduce the penalty originally levied at Rs.1,59,35,500/-. The AO accordingly passed order u/s 154 r.w.s. 271(1)(c) r.w.s. 275(1A) of the Act on 11.01.2021 reducing the penalty to Rs.52,46,160/-.

5. Aggrieved by the aforesaid penalty order dated 11.01.2021, assessee preferred appeal before CIT(A). CIT(A) observed that the AO, on receipt of the order of the Hon'ble ITAT wherein the quantum addition was reduced, was correctly of the opinion that there was a mistake and as the quantum of the tax sought to be evaded was reduced, the penalty levied consequently needs to be brought down to bring it in harmony with the assessed income. It was further observed that the appellant had, in fact, misreported the facts to evade payment of LTCG and that the ITAT had only reduced the quantum of tax sought to be evaded and the AO, following the order of the ITAT, reduced the penalty. It is also observed by CIT(A) that the assessee had not got the clean chit and it is undenied that the assessee had attempted evasion of paying due taxes. Considering these facts, the appeal of the assessee was dismissed by the CIT(A).

6. Aggrieved by the order of Ld.CIT(A), appellant filed present appeal before the Tribunal. The Ld. AR submitted that the assessee had filed additional ground of appeal *wherein* he has challenged the validity of the notice issued u/s.271(1)(c) of the Act. The Ld. AR stated that in the assessment

order, the AO had initiated penalty proceedings for concealment of income and furnishing inaccurate particulars thereof whereas in the notice u/s. 274 r.w.s. 271 of the Act dated 30.01.2015, it is stated that the assessee has concealed the particulars of income or furnished inaccurate particulars of such income. It is alleged by the Ld. AR that the AO was not sure as to which limb should be applicable in the case of the appellant and that he had not struck off the irrelevant portion of the notice and thus, the notice issued was bad in law and illegal. The AR in support of his contention relied on following case laws:

- a. CIT Vs. SSA's Emerald Meadows 73 taxmann.com 248 (SC)
- b. Mohd. Farhan A. Shaikh Vs. DCIT 125 taxmann.com 253 (Bom)
- c. PCIT Vs. Gopal Kumar Goyal 153 taxmann.com 534 (Delhi)
- d. PCIT Vs. Sahara India Life Insu. Co. Ltd. 108 taxmann.com 597 (Delhi)
- e. CIT Vs. Manjunatha Cotton & Ginning Factory 35 taxmann.com 250 (Kar)
- f. Mrs. Pratibhai Ashokkumar Godha Vs. ITO (ITA No. 1273/Ahd/2024 dated 09.10.2024.
- g. Aahvan Agencies Ltd. Vs. DCIT in ITA No. 1530/Ahd/2024 dated 11.12.2024.

7. On the other hand, Ld. Sr. DR for the Revenue supported the order of the lower authorities and prayed that order of CIT(A) be sustained. He submitted that the additional ground raised by the appellant for the first time before the Tribunal was never raised before the CIT(A).

8. We have heard both the parties and perused the materials on record carefully. We have also deliberated the case laws relied on by Ld. AR for the appellant. Since jurisdictional issue has been raised in the additional ground by the assessee, we shall first take up the same for decision. The additional

ground pertains to the validity of notice issued u/s 274 r.w.s 271(1)(c) and whether the failure to strike off inapplicable limbs, i.e., "concealment of income" or "furnishing of inaccurate particulars" renders the penalty proceedings invalid. It is seen from the records and the impugned appellate order of CIT(A) that he has not adjudicated this specific legal ground because such a ground was not raised before him. Therefore, he had no occasion to decide the issue raised in the additional ground. Since this additional ground has not been adjudicated by the CIT(A), in the interest of justice, we deem it appropriate to remand the matter back to the file of CIT(A) for fresh adjudication of the additional legal ground raised by the assessee, after giving reasonable opportunity of hearing to the assessee.

9. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963  
on 25/09/2025 in the open court.

**Sd/-**  
**(SUCHITRA R. KAMBLE)**  
**न्यायिक सदस्य/JUDICIAL MEMBER**

सूरत/Surat

दिनांक/ Date:25/09/2025

**Dkp Outsourcing Sr.P.S\***

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**लेखा सदस्य/ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

// True Copy //

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत