

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH "SMC" SURAT**

**BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER)  
AND  
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 408/SRT/2025  
Assessment Year: 2012-2013**

Jayantibhai Dahyabhai Patel,  
283, Padm Punj, Siddhanth  
Nagar Soccity, Gujarat Housing  
Board, Bharuch-392001.  
**PAN NO. AEBPP 3770 P**  
**Appellant**

**Vs.**

ITO, New Delhi,  
Bharuch-392001.

**Respondent**

Assessee by : None for assessee  
Revenue by : Ms. Namita Patel, Sr. DR

Date of Hearing : 06/10/2025  
Date of pronouncement : 07/10/2025

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 28.03.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2012-2013, raising following ground:

1. *Under the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming the penalty levied by A.O.*
2. At the very outset, it is pertinent to record that despite due and proper notice having been issued, none appeared on behalf



of the assessee, nor was any application for adjournment filed. It appears, therefore, that the assessee is not interested in prosecuting the appeal. However, since the matter involves a pure question of law arising from the levy of penalty under section 271(1)(c) of the Income-tax Act, 1961 ("the Act"), and all relevant material is available on record, we proceeded to hear the matter *ex-parte* qua the assessee, after hearing the submissions of the Ld. Departmental Representative (DR) and perusing the record with due care.

3. On perusal of the assessment records, it transpires that the reassessment proceedings under section 147 read with section 143(3) of the Act were completed on 12.12.2019, wherein the Assessing Officer made **an** addition of ₹5,25,000/- representing unexplained cash deposits. The Assessing Officer simultaneously initiated penalty proceedings under section 271(1)(c) of the Act for alleged concealment of income and furnishing of inaccurate particulars thereof.

3.1. The record reveals that in response to the show cause notice for penalty, the assessee merely sought that the proceedings be kept in abeyance and, at a later stage, contended in general terms that the addition itself was bad in law. No substantive explanation was, however, furnished to justify the possession or source of the impugned cash deposits. The Assessing Officer, therefore, came to the conclusion that the assessee had failed to discharge the onus cast under Explanation 1 to section 271(1)(c)



of the Act and that the explanation tendered was neither bona fide nor substantiated by any evidence.

3.2 Consequently, the Assessing Officer levied penalty at the rate of 100% of the tax sought to be evaded, amounting to **₹73,731/-**, by order dated 01.03.2024, holding that the assessee had concealed the particulars of income to that extent.

4. On further appeal, the Ld. CIT(A) affirmed the levy of penalty. It was observed that in the quantum proceedings, the addition made by the Assessing Officer had been sustained by the first appellate authority, and the assessee had not preferred any further appeal before the Tribunal. The Ld. CIT(A), relying upon the binding ratio of the Hon'ble Supreme Court in *Mak Data Pvt. Ltd. v. CIT* [(2013) 358 ITR 593 (SC)], held that once the assessee fails to substantiate the explanation relating to any fact material to the computation of total income, the deeming fiction under Explanation 1 to section 271(1)(c) automatically comes into operation.

4.1. The Ld. CIT(A) recorded that the assessee had not offered any credible explanation for the cash deposits and had not disclosed any material facts either at the assessment stage or during penalty proceedings. The relevant extract from the order of the Ld. CIT(A), which we find germane, is reproduced below for ready reference:

*“3.3. The issues were considered. The penalty order, written submission and relevant provisions of law were carefully*



perused. From the penalty order, it is apparent that the appellant had concealed the particulars of income for Rs. 5,25,000 /- being unexplained cash deposits. The appeal filed against the assessment order was dismissed by CIT(Appeals). The Appellant has not stated whether any further appeal was preferred before the Hon'ble Tribunal. In absence of such information, it is presumed that the matter has attained finality.

In the course of the appellate proceeding before the undersigned, the appellant in his submission reproduced above, has discussed the additions made but it remains a fact that he did not furnish an explanation of the facts material to the computation of his total income either during the assessment proceedings or during the penalty proceedings required as per the explanation-1 of section 271(1) of the Act, which reads as under:

"Explanation 1:- Where in respect of any facts material to the computation of the total income of any person under this Act, -

A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner to be false, or

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bonafide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,

then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed."

As per the observations of the Apex Court in the case of MAK Data Pvt. Ltd. vs. CIT, it has been held that explanation 1 of 271(1)(c) raises a presumption of concealment, when a difference is noticed by the A.O. between reported and assessed income. The burden is then on the assessee to show otherwise by cogent and reliable evidence. When the initial onus placed by the explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise. The question is whether the assessee has offered any explanation to escape the deeming of concealment of particulars of income. But, in the instant case, the appellant failed to explain the facts material to the computation of total income during the penalty proceedings thus resulting in deemed concealment of income. The Appellant has failed to disclose the investment in books of account which



*is the basis on which CIT(Appeals) has dismissed her appeal. This clearly reflects concealment of particulars of income.*

*4. In view of the facts and circumstances discussed above, I am not inclined to interfere in the action of the AO in imposing the penalty as per the order passed by the Assessing Officer. Hence, the penalty order u/s 271(1)(c) of the Act is hereby confirmed. As a result, the above Grounds of appeal are dismissed.*

**5.** We have given our anxious consideration to the findings recorded by the authorities below. The law on imposition of penalty under section 271(1)(c) is well settled. The burden initially lies upon the assessee to offer a credible, bona fide, and substantiated explanation for the discrepancy between the returned and assessed income. Once such burden is not discharged, Explanation 1 to section 271(1)(c) raises a statutory presumption of concealment, as held by the Hon'ble Supreme Court in *MAK Data Pvt. Ltd.* (supra).

5.1. It is also well settled that penalty proceedings are distinct from assessment proceedings, but the findings in the quantum proceedings are relevant and persuasive, particularly when the assessee fails to bring on record any fresh material or explanation at the penalty stage. In the present case, the assessee neither furnished any cogent evidence to explain the source of cash deposits nor demonstrated that the explanation, if any, was bona fide. The plea that the penalty should not be levied merely because the addition was contested does not hold merit, as the assessee failed to discharge the primary onus of substantiating the explanation by way of verifiable evidence.



5.2. We are of considered opinion that a bona fide and inadvertent error may not attract penalty, a conscious concealment or failure to explain material facts would squarely attract section 271(1)(c). The conduct of the assessee in the present case, as evident from the record, cannot be said to be a case of bona fide inadvertence. The explanation furnished is vague, unsupported, and devoid of any substantiating material.

6. In light of the foregoing discussion, we find that the Ld. CIT(A) has correctly appreciated the facts and applied the settled principles of law. We do not find any infirmity or perversity in the reasoning adopted by the Ld. CIT(A) in upholding the penalty imposed under section 271(1)(c) of the Act. The order of the Ld. CIT(A) is reasoned, consistent with judicial precedents, and calls for no interference. The ground of appeal of the assessee is dismissed.

7. In the result, the appeal of the assessee is dismissed.

**Order pronounced in the open Court on 07/10/2025.**

**Sd/-  
(SANDEEP GOSAIN)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Surat;

Dated: 07/10/2025

Rahul Sharma, Sr. P.S. (on Tour)

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Surat



5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Surat**