

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकरअपीलसं./ITA No.493/SRT/2024**

**Assessment Year: 2011-12  
(Hybrid hearing)**

Himmatbhai Nathabhai Rakholia, 1 <sup>st</sup> Floor Shreenath Estate Nana Varachha, Surat	<b>बनाम/ Vs.</b>	ITO, Ward- 3(3)(2), Surat
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAQPR4308C</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Rasesh Shah, CA
<b>Respondent by</b>	Shri Ajay Uke, Sr. DR
<b>Date of Hearing</b>	11/08/2025
<b>Date of Pronouncement</b>	07/11/2025

**आदेश / O R D E**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal by the assessee emanates from order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 20.03.2024 by the Commissioner of Income-tax (Appeals) – 4, Surat [in short, "CIT(A)"] for assessment year (AY) 2011-12.

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

*"1. On the facts and circumstances of the case as well as the law on subject, the Ld. CIT(A) has erred in confirming the action of assessing officer by levying penalty of Rs.8,61,595/-u/s. 271(1)(c) of the act.*

*2. On the facts and circumstances of the case as well as the law on subject, the Ld. CIT(A) has erred in not taking cognizance of the application made by the assessee in Dispute Resolution Scheme, 2016.*

*3. On the facts and circumstances of the case as well as the law on subject, the Ld. CIT(A) has erred in not considering the submission of the assessee on merits dated 01.08.2016.*

*4. It is therefore prayed that the above penalty levied by assessing officer and confirmed by CIT(A) may please be deleted.*

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

3. Brief facts of the case are that the assessee had filed his return of income for AY 2011-12 on 26.03.2012 declaring total income at Rs.1,44,270/-. The case of the assessee for AY 2011-12 was reopened by issuing notice u/s 148 of the Act on 07.02.2014. The assessment in the case of assessee was finalized u/s 143(3) r.w.s. 147 of the Act on 13.03.2015 determining total income at Rs.32,59,270/- after making addition of Rs.31,15,000/- u/s 68 of the Act. During assessment proceedings, Assessing Officer (in short, 'AO') observed that assessee in his balance sheet (as on 31.03.2011), showed unsecured loan of Rs.31,15,000/- from M/s. Balaji Enterprise. However, the assessee failed to establish the identity, creditworthiness of the creditor and genuineness of the transaction and offered the same for taxation. Therefore, AO treated the aforesaid amount of Rs.31,15,000/- as unexplained cash credit and added the same to the total income of the assessee u/s 68 of the Act and initiated the penalty proceedings u/s 271(1)(c) of the Act for concealment of income.

4. Subsequently, assessee, vide show cause notice, was requested to show cause as to why the penalty u/s 271(1)(c) of the Act should not be initiated in his case. In its reply, assessee submitted that since the amount of

Rs.31,15,000/- was offered voluntarily by him for taxation, therefore, penalty may not be levied in his case. Assessee relied on several case laws in support of his contention. However, the reply of the assessee was not found acceptable by the AO. Accordingly, AO levied the penalty of Rs.8,61,595/- u/s 271(1)(c) of the Act on the assessee for the concealment of particulars of income, vide his penalty order dated 11.08.2015.

5. Aggrieved by the aforesaid penalty order dated 11.08.2015, assessee preferred appeal before CIT(A). During appellate proceedings, AR of the assessee submitted a letter stating that the appellant had opted for Direct Tax Dispute Resolution Scheme, 2016 (DTDRS, 2016) for AY 2011-12 in respect of the assessment order and the penalty order passed u/s.271(1)(c) of the Act and had also paid the required amount of Rs.21,400/- for final settlement as per Form 3 of the DTDRS, 2016. He also attached copy of Form 3 issued by the PCIT-3, Surat on 0501.2017, Form 4 and challan paid under DRS Scheme and requested to pass the order accordingly. But, the appellant failed to furnish Form 5 and Form – 6. However, the CIT(A) issued several notices to the assessee requesting him to furnish Form 5 and Form 6 issued by the PCIT in respect of the declaration made by him under the DTDRS, 2016; however, no compliance was made by the assessee to any of such notices. Therefore, the CIT(A) concluded that the assessee was not interested in pursuing the appeal and accordingly dismissed the appeal of the assessee ex parte, vide its order u/s 250 of the Act dated 20.03.2024.

6. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted that the assessee had opted for and was granted Form 3 and Form 4 under the DTDRS, 2016, evidencing acceptance of his declaration by the competent authority. The assessee had paid the requisite amount in accordance with the Scheme, as evidenced by the challan enclosed. Once the declaration under the DTDRS, 2016 was accepted and Form 3 was issued, the penalty stood covered by the settlement. Even otherwise, the amount of Rs.31,15,000/- was offered voluntarily by the assessee for taxation, therefore, penalty may not be levied in his case. The Id. AR also submitted compilation of case laws relied upon, in support of his contention.

7. The learned Senior Departmental Representative (Id. Sr. DR) for the revenue, on the other hand, relied upon the order of the lower authorities and requested to uphold the order of CIT(A). At the same time, Id. Sr. DR fairly admitted that if the assessee's declaration under the Scheme was accepted and Form 5 was issued by the competent authority, the appeal would become infructuous.

8. We have heard both sides and examined the record and perused the material on record. The DTDRS, 2016 was introduced to provide a one-time opportunity for taxpayers to resolve disputed tax, interest and penalty matters. The assessee was subject to penalty u/s 271(1)(c) arising from the addition of Rs.31,15,000/- u/s 68 of the Act. The assessee had opted for

settlement of the said dispute under the DTDRS, 2016. The competent authority, i.e., the PCIT-3, Surat, issued Form 3 dated 05.01.2017. The assessee filed Form-4 after payment of the tax as per Form-3. The assessee has also placed on record the challan evidencing payment of Rs.21,400/-, in accordance with the said determination. The Revenue has not disputed the authenticity of these documents. Once, a declaration is accepted under the DTDRS, 2016 and Form 3 is issued, the consequence is that the matter covered by such declaration stands settled. The legislative intent behind the Scheme was to provide a full and final settlement of tax arrears and to bring closure to pending disputes. Therefore, where the declaration under DTDRS has been duly accepted and payment made, the corresponding penalty proceedings are deemed settled and abated. Accordingly, continuation of such penalty order would be contrary to the spirit and provisions of the Scheme. In any case, it is not the fault of the assessee that the PCIT did not issue Form 5 or 6. Hence, the penalty was not leviable under the facts narrated above. However, we make it clear that if it is subsequently found that the declaration of the assessee under the DTDRS, 2016 was rejected by the competent authority and Form 6 were not issued on account of such rejection, the revenue shall be at liberty to move appropriate application before this Tribunal for revival of the present appeal and restoration of the matter for adjudication on merits. Accordingly, the grounds raised by the assessee are allowed.

9. In the result, the appeal of the assessee is allowed in above terms.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963 on  
07/11/2025 in the open court.

**Sd/-**  
**(SANJAY GARG)**  
**JUDICIAL MEMBER**

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

Surat

**दिनांक/** Date: 07/11/2025

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

**// TRUE COPY //**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat

		Date	Initial	
1.	Draft dictated on (dictation sheet is enclosed with main file.)	07.11.2025	}	PS
2.	Draft placed before author	07.11.2025		PS
3.	Draft proposed & placed before the second member			
4.	Draft discussed/approved by Second Member.			
5.	Approved Draft comes to the Sr.PS/PS			
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Draft dictation sheets are attached			PS