

INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH "SMC": AGRA
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
(Through virtual hearing)

ITA No. 318/AGR/2025
(Assessment Year: 2014-15)

Shiva Preservation Pvt. Ltd, Kaist, Jawantnagar, Etawah, Uttar Pradesh -206245	Vs.	ITO, Ward-2(2)(5), Etawah
(Appellant)		(Respondent)
PAN: AAEC3418D		

Assessee by :	Shri Rajesh Malhotra, CA
Revenue by:	Shri Anil Kumar, Sr. DR
Date of Hearing	20/11/2025
Date of pronouncement	/11/2025

ORDER

1. The appeal in ITA No. 318/AGR/2025 for AY 2025, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. NFAC', in short] dated 12.08.2022 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2016 by the Assessing Officer, Income Tax Officer, Ward-2(2)(5), Etawah (hereinafter referred to as 'Id. AO').

2. At the outset, I find that there is a delay in filing of appeal by the Assessee before this Tribunal by 975 days. Considering the reasons adduced in the condonation petition , in the interest of substantial justice, I find that the Assessee was prevented from sufficient cause in not filing the appeal before this Tribunal in time and accordingly I am inclined to condone the delay and admit the appeal of the Assessee for adjudication.

3. The only issue to be decided in this appeal is as to whether the Learned CITA was justified in confirming the levy of penalty under section 271(1)(c) of the Act in the facts and circumstances of the instant case.

4. I have heard the rival submissions and perused the materials available on record. The return of income for the assessment year 2014-15 was filed by the Assessee Company on 15-11-2014 declaring total income of Rs. Nil under normal provisions of the Act and book profit of Rs. 7,17,850/- under section 115JB of the Act. In the scrutiny assessment proceedings under section 143(3) of the Act dated 30-12-2016, the Learned AO examined the veracity of fresh share application money received in cash from six parties totaling to Rs. 4,25,000/-. The assessment was completed by adding the sum of Rs 4,25,000/- as unexplained cash credit under section 68 of the Act being unverifiable in nature and the same was added under the head 'income from other sources' by the learned AO in the assessment proceedings. In the said quantum assessment proceedings, the learned AO recorded the satisfaction that Assessee had attempted to conceal the income of Rs 4,25,000/- by furnishing of inaccurate particulars and accordingly initiated penalty proceedings under section 271(1)(C) of the Act. In the show cause notice issued for initiation of penalty proceedings under section 274 read with section 271(1)(c) of the Act dated 30-12-2016, the learned AO clearly mentioned that Assessee had concealed the particulars of income and furnished inaccurate particulars of such income. Ultimately, the penalty under section 271(1)(c) of the Act was levied wherein clearly there was a finding by the learned AO that Assessee had furnished inaccurate particulars of income and concealed the income. It is pertinent to note that the quantum addition of Rs 4,25,000/- stood sustained up to the level of this Tribunal.

5. Now the short point that arises for my consideration is as to whether the assessee could be penalized by holding that it had committed both the offences

mentioned under Section 271(1)(c) of the Act, i.e. it had concealed the particulars of income and furnished inaccurate particulars of such income in respect of addition made in respect of share application money received in cash of Rs. 4,25,000/-. This argument was duly advanced by the Learned AR in support of the grounds of appeal taken by the assessee. The Learned AR placed heavy reliance on the decision of Hon'ble Delhi High Court in the case of PCIT v. M/s Gragerious Projects Pvt Ltd in ITA 90/2020 ; PCIT vs Sara Sae Pvt Ltd in ITA 109/2023, CM APPL. 8845/2023 ; PCIT vs Virtual Software and Training Pvt Ltd in ITA 392/2023 dated 22-11-2024, wherein it was held as under:-

"18. It is thus apparent that ordinarily the two phrases, i.e., "conceal" and "furnishing of inaccurate particulars" are separate and distinct. Concealment of income and furnishing of inaccurate particulars of income in Section 271(1)(c) of the Act carry different meanings and connotation.

*19. On principle, where the penalty proceedings are said to be initiated by the revenue under Section 271(1)(c) of the Act, the specific ground which forms the foundation thereof needs to be spelt out in clear terms. Otherwise, the assessee would not have proper opportunity to put forth his defense. The proceedings for initiating the penalty are penal in nature, which may result in imposition of penalty ranging from 100 to 300% of the taxability and therefore the charge must be unequivocal and unambiguous. **Where the charges are either of concealment of particulars of income or furnishing of inaccurate particulars thereof, revenue must specify as to which one of the two is sought to be pressed into service and cannot be permitted to club both.***

(emphasis supplied by us)

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23. Following the decision of the Karnataka High Court in the case of CIT v. Manjunath Cotton and Ginning Factory(supra) and the other decisions of different High Courts, the ITAT rightly held that the levy of penalty under Section 271(1)(c) of the Act in the case of the assessee was not valid.

24. We are unable to find any error having been committed by the ITAT. No substantial question of law arises.

25. The appeals are accordingly dismissed."

6. Respectfully following the above decision of the Hon'ble Delhi High Court, we direct the Learned AO to delete the penalty under section 271(1)(c) of the Act in respect of addition made on account of share application money received in cash of Rs 4,25,000/-. Accordingly, the grounds raised by the Assessee are allowed on this technical issue and no finding is hereby given on levy of penalty on merits of the addition and they are left open.

7. In the result, the appeal of the Assessee is allowed.

Order pronounced in the open court on 28/11/2025.

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 28/11/2025
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi