

**IN THE INCOME TAX APPELLATE TRIBUNAL
VARANASI BENCH, VARANASI
(Through Virtual Hearing)**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.39/VNS/2024
A.Y. 2015-16

Raees Alam Siddqui, Qazi Tola, Ghazipur, U.P.	vs.	Dy. CIT, Range-1, Varanasi
PAN: AICPS0379L		
(Appellant)		(Respondent)

Assessee by:	Sh. Arvind Shukla, Advocate
Revenue by:	Smt. Amandeep Kaur, Sr. DR
Date of hearing:	09.10.2025
Date of pronouncement:	31.12.2025

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the assessee against the orders of the ld. CIT(A), NFAC confirming the penalty under section 271(1)(c) that was levied upon the assessee vide the orders of the ld. Assessing Officer dated 25.01.2022. The grounds of appeal are as under:-

- "1. Because the learned Commissioner of Income Tax (Appeals), NFAC has erred both in law and on facts in confirming penalty Rs.2,13,250/- levied of by assessing officer under section 271(1)(c) of Income Tax Act, 1961.*
- 2. Because the learned Commissioner of Income Tax (Appeals), NFAC has erred both in law and on facts in confirming penalty of Rs. by 2,13,250/- levied assessing officer under section 271(1)(c) of Income Tax Act, 1961 without appreciating that the order passed by Ld. AO was in absence of granting proper opportunity of being heard to appellant.*
- 3. Because learned the Commissioner of Income Tax (Appeals), NFAC has erred both in law and on facts in of by confirming penalty Rs.2,13,250/- levied assessing officer under section 271(1)(c) of Income Tax Act, 1961 without affording proper opportunity of being heard to the appellant.*
- 4. Because on the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals), NFAC erred in upholding levying penalty of Rs. 2,13,250/- u/s 271 (1)(c) of Income Tax Act. 1961, levied by assessing officer in absence of any satisfaction drawn that the*

disallowances forming basis of penalty made at assessment stage are on account of deliberate, mala fide intention of the assessee to conceal the particulars or nor furnished inaccurate particulars.

5. Because on the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals), NFAC erred in upholding levying penalty of Rs. 2,13,250/- u/s 271(1)(c) without appreciating that the Ld. A.O. levied penalty without establishing that the explanation furnished by the appellant was false.

6. Because on the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals), NFAC erred in upholding penalty order pervasive to binding decisions interpreting provision explained by courts.

7. Because on the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals), NFAC erred in not appreciating the key facts that the assessment in this case had been done rejecting assessee's books of accounts and estimating income by applying net rate of profit.

8. Because without prejudice and in the alternative the order passed by the Ld. Assessing Officer and confirmed by learned Commissioner of Income Tax (Appeals), NFAC is bad in law."

2. The facts of the case are that the assessee filed a return of income for the A.Y. 2015-16 declaring a total income of Rs. 68,17,250/-. An assessment under section 143(3) was completed on 6.12.2017 determining total income at Rs. 82,90,220/-. During the course of assessment, it was found that sundry creditors and other expenses were unverifiable. Therefore, the ld. AO rejected the assessee's books of accounts under section 145(3) and determined the assessee's net profit @ 8% of total turnover and accordingly made an addition of Rs. 14,72,965/-. Penalty proceedings under section 271(1)(c) were thereafter initiated for concealment of particulars of income. The assessee filed an appeal against the assessment order and the ld. CIT(A) vide his order dated 25.04.2018 confirmed the rejection of the books of accounts but determined the net profit @ 7% of the turnover thereby sustaining an addition to the extent of Rs. 6,90,124/-. The ld. AO thereafter issued two opportunities to the assessee to submit why penalty should not be levied upon him. In response to the second notice, the assessee submitted replies in which it was contended that the assessee was a Contractor and the assessment of the net profit of the assessee had been finalized on estimate basis. A

net profit rate of 8% had been applied during assessment which had been subsequently reduced to 7% by the Id. CIT(A). It was submitted that since the appellate order had been passed on 25.04.2018, the penalty proceedings were barred by limitation a long time back. Furthermore, since there was no finding of any amount having been concealed and in view of several judicial pronouncements that there cannot be penalty on estimated addition, it was submitted penalty was not leviable. There was no incriminating material to show any concealment and therefore, penalty could not be levied in such circumstances. The Id. AO did not accept the submissions of the assessee. Without discussing the case laws cited, he held that the same were distinguishable from the facts of the assessee's case. He further pointed out that due to Covid 19 pandemic, all proceedings pending and having limitation date upto 31.03.2020, had been extended upto 31.03.2022 due to the various Court decisions and circulars / orders of the CBDT on account of the Covid 19 pandemic. Therefore, he held that the proceedings were not barred by limitation. On the merits of the issue, he stated that the enhancement in the net profit had been confirmed to an extent by the Id. CIT(A), after it had been found that the assessee's books of accounts were unverifiable and unacceptable. Therefore, from the same, he concluded that the assessee had concealed the particulars of its income and accordingly, he levied the penalty of Rs. 02,13,250/-.

3. Aggrieved with the said order, the assessee filed an appeal before the Id. CIT(A), NFAC. Before the Id. CIT(A), it was submitted that there was no positive finding of any fact being concealed or for furnishing of inaccurate particulars. Even the Id. CIT(A) had estimated the income of the assessee and therefore, the penalty had been imposed only on the estimation of profits. The assessee cited several case laws to point out that in case of such estimated additions, no penalty could be levied. It was further pointed out that in the present case, that the Id. CIT(A) had not cited any comparable cases also for adopting a profit rate of 7%. Reliance was placed on the judgment of Hon'ble Chhattisgarh High Court in the case of CIT vs. Vijay Kumar Jain (2010) 325 ITR 378, wherein the Court had held that if the particulars of receipts furnished by the assessee were not found inaccurate and

there was no allegation by the Revenue that the assessee had concealed any income in his return, the penalty under section 271(1)(c) could not be imposed simply on account of addition made by the ld. AO on application of a higher rate of profit. It was further submitted that the case of the assessee was squarely covered by the judgment of the Hon'ble Punjab & Haryana High Court in the case of Harigopal Singh vs. CIT 258 ITR 85 (P&H) in that case, the assessee had not maintained any accounts and filed his income on estimate basis. The ld. AO did not agree with the estimate and brought his income to tax by adopting another estimate. The Tribunal agreed that the income had to be assessed on estimate of turnover but reduced the extent of addition. The Hon'ble High Court had held that since the ld. AO and the Tribunal had adopted different estimates, in assessing the income of the assessee, it cannot be said that the assessee had concealed the particulars of his income so as to attract clause (c) of section 271. It was submitted that there was not an iota of evidence to show that the income of the assessee during the year under appeal was more than the income returned by him. Additions in his income made on estimate basis did not lead to the conclusion that the assessee had either concealed the particulars of his income or furnished inaccurate particulars of income. To be concealment, there had to be a positive act and the onus to prove this rested on the Department. The Tribunal was unjustified in relying on Explanation 1(B) to raise a presumption against the assessee and the provisions of section 271(1)(c) were not attracted to cases where income of an assessee was assessed on estimate basis, additions were made therein on that basis. The assessee further submitted that in the case of Valimk H. Patel 280 ITR 487, the Hon'ble Gujarat High Court had held that in a case of substitution of one estimate by another estimate, the penalty was not leviable. Reliance was also placed on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Gurbachan Lal 250 ITR 157 and CIT vs. Rahuji and Co. 250 ITR 225 to make the point that Explanation 1 to section 271(1)(c) did not make the assessment order conclusive evidence, that the amount assessed was, in fact, the income of the assessee. On account of the state of accounts, and evidence in the quantum

proceedings, the assessment of income could be justified, but merely on that basis, a penalty could not be levied even by recourse to Explanation 1. The ld. CIT(A) considered the submissions made by the assessee. He held that it had clearly established that the books of accounts of the assessee were not correct or complete and it was that which required the AO to make an assessment of income on the basis of material available on record. This showed that the fact of furnishing of inaccurate particulars of income was established before the ld. CIT(A). The ld. CIT(A) also noted that the assessee's claim of creditors and other expenses remained unverifiable as elaborately described in the assessment order. It was, therefore, not the case that the assessee had furnished all the relevant details in respect of its declared profit and it was for this reason that the books remained unverifiable and had to be rejected. Since, the assessee could not provide a satisfactory explanation regarding the facts material to the computation of total income, the penalty proceedings were maintainable in view of Explanation 1 of section 271(1)(c). The ld. CIT(A) pointed out that in the case of MAK Data Pvt. Ltd. 306 ITR (SC), it had been held that Explanation 1 of section 271(1)(c) raises a presumption of concealment, wherein a difference is noticed by the ld. AO between the reported income and the assessed income. The burden then shifts to the assessee to show otherwise by cogent and reliable evidence. In the instant case, the assessee had failed to show that the explanation was bona fide. The case laws relied upon by the assessee were not applicable because of lack of correctness and completeness of the accounts and non-furnishing of details in support of the same. The arguments of the assessee that penalty could not be levied on account of an estimate had not rebutted the presumption available to the AO on account of the Explanation 1 to section 271(1)(c). Accordingly, the ld. CIT(A) confirmed the penalty order passed by the ld. AO.

4. The assessee is aggrieved at the confirmation of the penalty by the ld. CIT(A) and is accordingly come in appeal before us. Sh. Arvind Shukla, Advocate (hereinafter referred to as the ld. DR) appearing on behalf of the assessee submitted that in the instant case, the ld. AO had made the addition on account of

estimation of net profit. There was no finding in the assessment order that the assessee had filed inaccurate particulars of income. It was submitted that the rejection of books of accounts and the estimation of the assessee's income at a higher figure than what was disclosed in the assessee's books was on account of the fact that the assessee could not furnish confirmation of accounts of individual creditors and therefore, even though the ledger accounts of the creditors had been furnished, the Id. AO had held the sundry creditors to be unverified. Furthermore, the Id. AO had held self-made vouchers of expenses in cash to be unverifiable and had therefore, rejected the books of the assessee on this account. The contention of the assessee that the expenses had actually been incurred and were liable to be accepted in the light of business expediency was not accepted by the Id. AO. While the AO had recorded a satisfaction of the books not being acceptable, he had not brought on record in the assessment order any finding that the assessee had furnished any inaccurate particulars of his income or had concealed any part of his income. Thus, in the absence of such findings, no penalty could be levied against the assessee. Our attention was invited to the decision of the ITAT Jaipur Bench of the ITAT in the case of Sh. Vishnu Tambi vs. DCIT, Central Circle-1, Jaipur wherein this matter had been discussed in detail. It was submitted that in the said case, the Tribunal had held that while the AO had made addition on account of application of GP rate of 10% and not recorded any findings in the assessment order that the assessee had furnished inaccurate particulars of income or had concealed the income, it was a case of an estimate against an estimate and therefore, no penalty was leviable in such a case where additions were based purely on estimate basis. The Tribunal had relied upon the cases of Gulraj Vaswani vs. ACIT (IT(SS)A No.21/JP/06 wherein the penalty had been deleted because at every level, there had been an estimation varying as per difference of opinion from authority to authority. Reliance had also been placed in the case Smt. Bitoli Devi vs. ACIT (2007) 110 TTJ (Luck) 735 wherein it had been held that unless any positive concealment is found, no penalty was leviable on the basis of additions made on estimate. The Tribunal also relied on the decision in CIT vs. PHI Seeds India Pvt.

Ltd. 159 Taxman 9 Delhi, which held that the Act does not envisage or explicitly provide that in every case where a return was not accepted as correct and the assessment was framed at a higher income than that presented, penalty proceedings under section 271(1)(c) must be initiated. The same is only attracted when the assessee had concealed his income or furnished inaccurate particulars. The following case laws had also been relied upon by the Tribunal while holding that penalty cannot be levied on only estimated additions;

- i. CIT vs. s. Rahamat Khan Birbal Khan Badruddin & Party, 240 ITR 778 (Raj.)
- ii. ACIT vs. Bansiwala Iron & Steel Re-rolling Mills, 21 TW 533 (JP)
- iii. CIT vs. Subhash Trading Co., 221 ITR 110 (Guj.)
- iv. Harigopal Singh vs. CIT 258 ITR 85 (P&H)
- v. ACIT vs. Ganpat Lal Goyal, 32 TW 91 (JP)

The Tribunal held that by virtue of section 271(1)(c) that the ld. AO had been given discretion to levy penalty in case there was a concealment of income and also with regard to quantum of penalty. However, it was a basic need of the provision of law that a definite finding was required to be recorded by the ld. AO for reaching a conclusion regarding concealment of income or furnishing of inaccurate particulars of income and without any such findings, there could not be any question of imposition of penalty. Thus, the mere revision of income to a higher figure on estimate basis by the AO did not automatically warrant an inference of concealment of income as that implied some deliberate act on the part of the assessee in withholding the true facts. Relying upon the decision of Hon'ble Madras High Court in the case of CIT vs. K.R. Chinni Krishna Chetty (2000) 246 ITR 121 (Mad). The Tribunal allowed the appeal of the assessee as the additions were made on the basis of estimation. Accordingly, it was prayed that since the case of the assessee was identical to the case decided by the ITAT Jaipur Bench as above, the penalty in the assessee's case may also be deleted.

5. On the other hand, Smt. Amandeep Kaur, Sr. DR (hereinafter referred to as the ld. DR) appearing on behalf of the Revenue submitted that the assessee had

been failed to furnish evidence to justify his claim of sundry creditors and also to justify the expenses claimed by him. The assessee had not been able to furnish the evidence and this led to an inference of filing of inaccurate particulars of income. Therefore, the ld. AO was justified in levying the penalty under section 271(1)(c) and the ld. CIT(A) had duly taken note of this aspect while confirming the penalty. It was submitted that the case of the assessee was materially different from the other cases cited by him. In those cases, the penalty had been deleted because there was no finding that there were inaccurate particulars of income, but in the penalty order, the ld. AO had clearly recorded the fact that the assessee had not furnished / proved all the relevant details in respect of the declared profit and as a result had to estimate the income. The ld. CIT(A) had held that the failure to furnish the relevant information brought the case within the ambit of Explanation 1 of section 271(1)(c) and therefore, he had confirmed it. It was prayed that since the said penalty was as per the provisions of law, it may be confirmed.

6. We have duly considered the facts and circumstances of the case. Ongoing through the order of the ld. AO, it is seen that the ld. AO has refused to accept the sundry creditors only on account of the fact that confirmation has not been furnished from them and some expenses on account of the fact that they were self-vouched and in cash. We believe that to establish a charge of furnishing of inaccurate particulars of income or concealment of income, the ld. AO would have had to bring further materials on record to show that the sundry creditors were in fact non-existent and the expenses had in fact not been incurred. This could have been done with cross referencing within the various heads of income and expenditure shown by the assessee. But the ld. AO did not carry out this exercise and hence no finding of concealment of income or furnishing of inaccurate particulars of income has been recorded. It is further noticed that the estimate that had been arrived at by the ld. AO is not on account of any scientific analysis of what should be the net profit in such cases but merely because in the case of the assessee's brother, the profit rate had been estimated at 8%. The ld. CIT(A) had reduced this net profit rate to 7% holding it to be excessive. Thus, as pointed out

by the ITAT Jaipur Bench in its order in the case of Sh. Vishnu Tambi vs. DCIT (supra), since there is no definite finding for reaching a conclusion with regard to concealment of income or for furnishing inaccurate particulars of income, there cannot be any question of imposition of penalty only on account of revision of income to a higher figure on estimate basis by the ld. AO and subsequent reduction of that estimate by the ld. CIT(A). There are a number of case laws which have been cited by the ld. AR to demonstrate that where the income is estimated after rejection of the books of accounts, an automatic inference of concealment does not arise. In our view, for the failure to keep proper evidences in support of the books of accounts, a penalty under section 271A may be leviable, but that itself would not justify a penalty under section 271(1)(c). Explanation 1 to section 271(1)(c) does not make the assessment order conclusive evidence that the amount assessed was in fact the income of the assessee, where the income is assessed on estimate basis. While the failure to substantiate the positive entry in the books of accounts may justify the assessment of income, but merely on that basis, the penalty cannot be justified even by recourse to Explanation 1. In the circumstances, following the decision of the Hon'ble ITAT Jaipur Bench in the case of Sh. Vishnu Tambi vs. DCIT (supra), we hold that in the present case also, since no positive evidence has been brought on record to suggest concealment of income or furnishing inaccurate particulars of income and since the estimates had been varied by various authorities according to their appreciation of facts, penalty under section 271(1)(c) is not leviable upon the assessee. Accordingly, it is deleted.

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

Order pronounced on 31.12.2025 in the Open Court.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED: 31/12/2025

Sh

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.