

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No. 4072/Mum/2023
(Assessment Year: 2011-12)**

Ms. Choudhari Constructions Co. 151/129, Sidharth Nagar, Road No. 5, Behind Cinemax Cinema, S.V. Road, Goregoan (W), Mumbai – 400062.	Vs.	ACIT, Circle – 31(1) Mumbai – 400020.
PAN/GIR No. AABFC2689N		
(Applicant)		(Respondent)

Assessee by	Ms. Sanjukta Samantara
Revenue by	Shri Krishna Kumar, CIT(DR)

सुनवाई की तारीख/Date of Hearing	31.12.2024
घोषणा की तारीख/Date of Pronouncement	25.02.2025

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the assessee challenging the impugned order 11.09.2023, passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ('Ld. CIT(A)'), for the assessment year 2012-13. The assessee has raised the following grounds of appeal:

1. (a) *The Id. CIT(A) erred in confirming the penalty without appreciating that the Appellant had neither concealed its income deliberately nor furnished any inaccurate particulars of its income and further erred in not appreciating that where upon a claim, the appellant had declared to cover discrepancies and to not to impose any penalty, it does not become a case for penalty u/s. 271(1)(c) as Revenue had accepted the same, therefore, the levy of penalty is not justified and the same may be deleted.*

(b) Without prejudice to above, as penalty proceeding and quantum proceeding are distinct and separate and since the disallowance/addition per se does not necessarily justify the levy of penalty, u/s. 271(1)(c); the same may be deleted.

2. Both the grounds raised by the assessee are interconnected and interrelated and relates to challenging the order of Ld. CIT(A) in confirming the penalty imposed by the AO, therefore, both these grounds are taken up together and are being adjudicated through the present consolidated order

3. We have heard the counsels for both the parties and have also perused the material placed on record, judgements cited before us and also the orders passed by the revenue authorities.

4. From the records, we noticed that the assessee is a road contractor mainly for BMC. During the year under consideration, the assessee had originally filed return of income, declaring net income at Rs.79,99,860/-. A survey action under section 133A of the act was conducted on 24th January 2012 and during the course of survey, some general discrepancies towards purchase expenses were pointed out

and therefore assessee by mutual discussion has declared an additional income of Rs.70 lakhs and accordingly revised the return on 25th February 2012 and paid the required amount of tax.

5. Since according to the assessee, the declaration was made on good faith, requesting the department not to levy penalty under the provisions of income tax act. However, subsequently, the assessment was completed, accepting the said additional income on 10.03.2014 and order was passed under section 143(3) of the income tax act, thereby initiating penalty under section 271(1)(c) of the Act for furnishing of inaccurate particulars of income and for concealment of income.

6. Ld. AR specifically argued that since during the initial proceedings, the assessee had made voluntarily declaration, thereby declaring Rs.70 lakhs as additional income only on the condition that no penalty be levied and the said amount was disclosed just to buy peace. It was further submitted in the circumstances when once the statement of additional income, thereby declaring of Rs. 70,00,00 was made voluntarily to buy peace and taxes were paid thereon and the revised return filed by the assessee was also accepted, therefore there was no occasion for the department to levy penalty. In this regard Ld. AR relied upon the following judicial decisions:

- 1. CIT VS SAS pharmaceutical [2011] 335 ITR 259 Delhi,**
- 2. CIT Vs. Shankarlal nebhamal Uttamchandani, 311 ITR 327 (Guj).**
- 3. CIT Vs Suraj Bhan, [2007], 294, ITR, 481**
- 4. Ajay Sangari & Co Vs ACIT 140 TTJ 388 Chandigarh**

7. It was also argued that while invoking penalty provisions U/s 271(1)(c) of the Act, once the AO was not sure regarding which limb of penalty provision he intends to press into, therefore his action of levy of penalty is against the provisions of law. It was submitted that the penalty in the present case had been levied without issuing of mandatory notice and on both the limb i.e concealment of income and furnishing of inaccurate particulars of income. It was further submitted that penalty on both the limbs cannot be imposed and relied upon the decision in the following cases:

- 1. [2022] 447 ITR 743 (Bom) Ganga Iron and Steel Trading Co. Vs. CIT.**
- 2. [2023] 115 taxman.com (Bom) PCIT Vs. HC Jehangir.**
- 3. [2016] 242 taxmann.com 180 (SC) CIT Vs. SSA's Emerald Meadows.**

8. On the other hand, Ld. DR relied upon the orders passed by the revenue authorities.

9. After having heard both the parties at length, we found that the facts of the present case are not disputed. It is not a dispute that assessee originally filed return of income and thereafter survey action u/s 133A of the Act was 24.01.2012

conducted on 24th January 2012. During the course of survey some general discrepancies towards purchase expenses were pointed out and assessee declared an additional income of Rs.70 lakhs on account of unverified expenses and for want of maintaining bills and vouchers and on the condition that the department shall not initiate any penalty proceeding against the assessee and in this regard we have perused question number 22, wherein Survey during the survey proceedings surface answer of the assessee was recorded. It is also not in dispute that additional income of Rs.70,00,000 was reflected in the revised return which was filed by the assessee on 25.02.2012 and paid the required amount of taxes. Therefore in this scenario penalty could not be imposed we rely upon case the decision in the of **CIT Vs. SAS Pharmaceuticals (2011) 335 ITR 259 (Del)**, wherein it was held as under:

Section 271(1)(c) of the Income-tax Act, 1961 Penalty For concealment of income Assessment year 2003-04 - Whether for imposing penalty under section 271(1)(c), concealment of particulars of income or furnishing of inaccurate particular of income by assessee has to be in income-tax return filed by it - Held, yes Whether where income surrendered by assessee during survey had been shown by it in its regular income-tax return filed within prescribed time, penalty could be imposed upon it under section 271(1)(c) Held, no

Words and phrases: Expression 'in the course of any proceedings under this Act' occurring in sub-section (1) of section 271

10. The above issue was also considered of Hon'ble Gujarat High Court in the case of **CIT Vs. Shankarlal Nirmal Uttam Chandni, 311 ITR 327 (Guj)** where in it was held as under:

Section 271(1)(c) of the Income-tax Act, 1961 Penalty For concealment of income Assessment years 1985-86 to 1987-88 Where process of detection of allegedly concealed income was not complete, till date of filing of revised returns, imposition of penalty on assessee was not justified [In favour of assessee]

During the course of search of the assessee's premises various documents, loose papers, passbooks, bank statements, etc., were found and seized. On the basis of various passbooks of Vysya Bank and Canara Bank in relation to bank accounts in the names of various family members of the assessee, certain queries were raised by the Revenue. On 27-2-1989, the assessee surrendered the amounts reflected by the various bank accounts in the names of the family members as his own income from undisclosed sources followed by revised returns filed on 31-3-1989. The Assessing Officer came to the conclusion that the assessee was guilty of concealment of income by furnishing inaccurate particulars in the original returns of income and for this purpose, apart from the factum of the assessee having declared the amounts standing to the credit of the family members in the bank accounts, the Assessing Officer noted that such an amount reflected in the bank accounts in the names of the family members was not commensurate with the known sources of income of those family members and that the passbooks of the bank accounts were found from the custody of the assessee, the bank accounts were operated by the assessee, and the funds utilised by the assessee for investment in the firm. Therefore, he held that the amount actually belonged to the assessee. He, therefore, imposed penalty on the assessee under section 271(1)(c).

Held that the Tribunal had in terms found that though certain queries were raised and put to the assessee there was no specific pinpointing of particular items of income which had been concealed by the assessee. The Tribunal had found, as a matter of fact, that till 31-3-1989, the process of detection of allegedly concealed income was not complete, being the date of filing of the

revised returns. The Tribunal had also noted as a matter of fact that the very same amounts standing to the credit of the bank accounts of various family members had already been assessed by the Departmental authorities along with interest in the hands of the family members and it was also an admitted position that those family members had nowhere admitted that the family members were benamidars of the assessee.

In the circumstances, the Tribunal rightly came to the conclusion that no penalty was exigible under the provisions of section 271(1)(c).

11. Further, Hon'ble Punjab and Haryana High Court in the case of **CIT Vs Suraj Bhan, [2007] 294 ITR 481, has also held as under:**

Section 271(1) (c) of the Income-tax Act, 1961 Penalty For concealment of income Assessment years 1969-70 and 1970-71 Whether when an assessee files a revised return showing higher income and gives an explanation that he offered higher income to buy peace of mind and avoid litigation, penalty cannot be imposed merely on account of higher income having been subsequently declared Held, yes

13. In the case of **Ajay Sangari & Co Vs. ACIT, 140 TTJ 388 (Chd)** it was held as under:

Section 271(1)(c) of the Income-tax Act, 1961-Penalty For concealment of income Assessment year 2005-06 After filing of return of income, a survey action was carried out at business premises of assessee-company during which certain documents were found and impounded Trading accounts provisionally prepared for year in question did not tally with figures shown in accounts furnished with return of income Assessee explained that entries in provisional trading account were made for availing credit limits from bank Further, in order to buy peace of mind, it surrendered a sum of Rs. 25 lakhs as additional income which was made subject to non-levy of penalty for concealment Assessing Officer accepted said additional income disclosure but

initiated penalty proceedings and levied certain penalty under section 271(1)(c), which was upheld by Commissioner (Appeals) Whether since Assessing Officer had failed to point out any discrepancy in explanation furnished by assessee and had proceeded to assess income in hands of assessee on basis of surrender made by assessee, it could not be said that assessee had concealed any income and there was no merit in levy of penalty under section 271(1)(c) Held, yes In favour of assessee)

14. After having gone through the facts of the present case and also keeping in view, the principles laid down by the different higher judicial authorities as mentioned above, we are of the view that when an assessee filed a revised return showing higher income and gives an explanation that he is offering higher income to buy peace of mind and avoid litigation then in that eventuality penalty under section 271(1)(c) of the Act cannot be imposed, merely on account of higher income, having been subsequently declared as accepted by the AO.

15. Moreover, in the present case, the penalty has been initiated and imposed under both the limbs i.e concealment of income and filing of inaccurate particulars of income under section 271(1)(c) of the income tax act. The department could not place on record the copy of notice issued by the authorities before initiating levy of penalty which goes to show that no notice was issued before imposing penalty upon the assessee. It has been held by Hon'ble Delhi High Court that Concealment of income and furnishing of inaccurate particulars of income are distinct ground for penalty and u/s 271(1)(c) of the act and therefore

cannot be clubbed together. Therefore, considering the totality of the facts and circumstances as discussed by us above and also keeping in view the principles laid down by higher judicial authorities, we delete the penalty and allow these grounds

16. In the net result, appeal filed by the assessee stands allowed.

Order pronounced in the open court on 25.02.2025.

Sd/-

(PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 25/02/2025

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai