

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपीलसं./ITA No. 1077/JPR/2025
निर्धारणवर्ष/AssessmentYear : 2017-18

The DCIT Circle-1 Jaipur	बनाम Vs.	M/s. Bharat Spun Pipe And Construction Company 43, Industrial Area, Jhotwara, Jaipur-302 012
स्थायीलेखा सं./जीआईआरसं./PAN/GIR No.: AABFB 4917 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby :Shri Tarun Kumar Mittal, CA
राजस्व की ओरसे / Revenue by: Shri Anil Kumar Bhardvaj, CIT-DR
सुनवाई की तारीख / Date of Hearing : 01/10/2025
उदघोषणा की तारीख / Date of Pronouncement: : 07/10/2025

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

By way of present the revenue challenges the order of the National Faceless Appeal Centre [for short CIT(A)] dated 28.05.2025. The dispute relates to the assessment year 2017.18. In this appeal the solitary ground raised by revenue reads as under :

"Whether on the facts and in the circumstances of the case and in law,the Id. CIT(A)is justified in deleting the penalty of Rs.1,18,37,790/- imposed u/s 271AAC(1) of theAct, 1961 on the ground that the quantum addition has been deleted by CIT(A) in quantum appeal ignoring the facts that the Department has filed appeal before the Hon'ble ITAT,Jaipur Bench, Jaipur which is pending?"

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2.1 Apropos solitary ground of appeal of the Department, it is noticed that the Id. CIT(A) allowed the appeal of the assessee by observing as under:-

"3. The appellant vide his letter dated 13.01.2025 submitted that the additions which formed the basis for the penalty under Section 271AAC(1) have been unwarranted and deserve to be deleted which was imposed through order under section 147 r.w.s. 143(3). The appeal in this case has already been disposed of and the additions have been deleted by first appellate authority vide order dated 08/01/2025. The necessary copy of assessment order under section 250 of income tax act 1961 was passed through Order No. ITBA/NFAC/S/250/2024-25/1071990814(1) dated 08/01/2025 is enclosed herewith. Legal Precedent and Relevant Provisions. The law is settled that penalty proceedings under Section 271AAC(1) should not be initiated or concluded if the additions are dropped or the issue is still under appeal. This principle has been upheld in various judicial pronouncements, and hence, the penalty order in this case is premature and liable to be cancelled. Given the above circumstances, we hereby request you to relief may be granted by deleting the penalty levied under Section 271AAC(1) for A.Y. 2017-18 and drop the proceedings in view of the fact that the penalty order has been passed even though the appeal is pending before the first appellate authority and latter on the additions have been dropped by first appellate authority

5. Adjudication: The appellant's quantum appeal against the order u/s.147r.w.s143(3) dated 29/05/2023 has been adjudicated by the NFAC vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1071990814(1) dated 08/01/2025 wherein the NFAC has allowed the appeal of the appellant and deleted the addition made u/s 68 amounting to Rs. 15,32,40,000/-towards bogus contract receipts. The NFAC has held that from the perusal of documents furnished during assessment proceedings it can be concluded that appellant had executed the subcontract work for Two lane ROB at Chainage 90+ 733 at Degana. It is also seen that the Income Tax Appellate Tribunal, Ahmedabad in the case of M/s

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Dineshchandra R Infracon Private Limited vide order passed in ITA no 369/Ahd/2019 and 414/Ahd/2018 has deleted the bogus expenses to the tune of Rs. 16,98,19,305/- added by the jurisdictional AO. From the perusal of the above order, it is evident that the additions regarding bogus subcontract expenses in the case of DRAIPL which were the only basis for reopening the case of assessee, stood deleted by the jurisdictional ITAT. Ahmedabad. Further, the subcontract receipt was declared in the return of income filed by the assessee and due taxes were paid. Hence, based on the order of jurisdictional ITAT on the main case, facts and circumstances, it can be concluded that addition of subcontracting Income from M/s DRAIPL to the income of assessee firm was unwarranted and deserves to be deleted, Hence, since the foundation of the penalty (the additions made) has been deleted, the penalty itself is not warranted to be levied As a result, the appeal is allowed.”

2.2 During the course of hearing, the Id. DR supported the penalty order u/s 271AAC(1) of the Act passed by the AO vide order dated 27-03-2024 but at the same time did not dispute the facts placed on record by the Id. AR of the assessee that the even the co-ordinate bench of Jaipur has confirmed the action of the Id. CIT(A) in deleting the addition made by the Id. AO and thereby the fact that the present appeal has no grievance as such.

2.3 On the other hand, the Id. AR of the assessee relied upon the order of the Id. CIT(A).

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2.4 We have heard both the parties and perused the materials available on record. It is noticed that the AO imposed penalty of Rs.1,18,37,790/- u/s 271AAC(1) by observing asunder:-

“In view of the above facts and circumstances, Rs.15,32,40,000/- was determined to be income of the assessee u/s 68 of the Act which renders the assessee liable for penalty u/s 271AAC(1) of the Income Tax, 1961. I consider it to be a fit case for levying penalty u/s 271AAC(1) @ 10% of the tax payable under section 115BBE of the I.T.Act.”

The Bench noticed that the Id.CIT(A) vide his order dated 28-05-2025 deleted the penalty as the quantum appeal of the assessee was already allowed by the Id. CIT(A). The Bench also noticed that against that order of the Id. CIT(A) revenue filed an appeal before this tribunal in quantum proceeding in ITA No.360/JPR/2025 vide which revenue challenges the action of the Id. CIT(A) in deleting the addition amounting to Rs.15,32,40,000/-. The co-ordinate Bench considered the appeal of the Department and C.O. of the assessee and thus dismissed the appeal of the revenue relating to quantum addition and allowed the C.O. of the assessee by observing at para 15 of his order. The fact so narrated before the bench by the Id. AR of the assessee has not been disputed by the revenue and thereby the grounds of the appeal taken by the revenue that the Id. CIT(A) was not justified in deleting the penalty of Rs.1,18,37,790/- imposed u/s 271AAC(1) of the Act, 1961 on the ground that “*the quantum addition has*

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been deleted by CIT(A) in quantum appeal ignoring the facts that the Department has filed appeal before the Hon'ble ITAT, Jaipur Bench, Jaipur which is pending."Thus, very basis upon which the present the appeal is filed has been decided against the revenue and therefore, we do not see any infirmity in the order of the Id. CIT(A) and thereby the present appeal of the revenue stands dismissed.

3.0 In the result, the appeal of the department is dismissed.

Order pronounced in the open court on 07 /10/2025.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 07/10/2025

*Mishra

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- The DCIT, Circle -1, Jaipur
2. प्रत्यर्थी / The Respondent- Bharat Spun Pipe And Construction Company
3. आयकरआयुक्त / Theld CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.1077/JP/2025)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar