

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &  
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 6706/Mum/2025  
(Assessment Year: 2015-16)**

<b>Dwarka Cement Works Limited (converted into Dwarka Cement Works LLP w.e.f. 15.09.2022)</b> 304, Arun Chambers, Tardeo, Mumbai Central, Mumbai-400 034	Vs.	<b>ITO Ward-6(2)(1),</b> Room No. 510, Aayakar Bhavan, Maharshi Karve Road, Mumbai – 400 020
PAN/GIR No. AAACD2955L		
(Applicant)		(Respondent)

Assessee by	Shri Satish Mody, Ld. AR
Revenue by	Shri Annavaram Kosuri, Ld. DR

Date of Hearing	19.02.2026
Date of Pronouncement	23.02.2026

आदेश / ORDER

**PER MAKARAND VASANT MAHADEOKAR, AM:**

This appeal filed by the assessee is directed against the order dated 27.08.2025 passed by the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] under section 250 of the Income-tax Act, 1961 [hereinafter referred to as “the Act”] for the

Assessment Year 2015–16, whereby the penalty of Rs. 37,29,845/- levied under section 271(1)(c) of the Act by the Assessing Officer was confirmed.

### **Facts of the Case**

2. The assessee, Dwarka Cement Works Limited (now converted into Dwarka Cement Works LLP w.e.f. 15.09.2022), filed its return of income for A.Y. 2015–16 under section 139(1) on 29.09.2015 declaring loss of Rs. 1,15,25,958/-. The case was selected for scrutiny under CASS and assessment was completed under section 143(3) on 28.12.2017 accepting the returned loss.

3. Subsequently, the case was reopened by issuance of notice under section 148 dated 29.07.2022. In response thereto, the assessee filed return of income on 26.08.2022 disallowing the claim of bad debts amounting to Rs. 1.18 crores. From a perusal of the assessment order and the consequential penalty order, it emerges that the assessee is engaged in the business of commission agency and is also earning interest on fixed deposits and capital gains on sale of investments. During the financial year 2014–15 relevant to the assessment year under consideration, the assessee had claimed bad debts aggregating to Rs. 1.18 crores. The said amount comprised a loan of Rs. 1.13 crores given to M/s Karnavati Securities Pvt. Ltd. and an advance of Rs. 5 lakhs paid towards purchase of a flat.

4. The Assessing Officer was of the view that the assessee was not engaged in the business of money lending and that the

aforesaid amounts did not constitute trading debts arising in the ordinary course of business. According to the Assessing Officer, the amounts were in the nature of capital expenditure and were not allowable as business expenditure. Upon issuance of notice under section 148 of the Act, the assessee filed its return of income in response thereto and disallowed the entire claim of bad debts.

5. The reassessment was completed under section 143(3) read with sections 147 and 144B of the Act vide order dated 02.05.2023, wherein the returned figure of loss at Rs. (-) 30,057/- was accepted without making any further addition or disallowance. Notwithstanding the fact that no further addition was made in the reassessment order, the Assessing Officer held that the reduction in loss from Rs. 1,15,25,958/- as originally returned to Rs. (-) 30,057/- represented concealment of income to the extent of Rs. 1,14,95,901/-

6. On the aforesaid basis, the Assessing Officer initiated and subsequently levied penalty under section 271(1)(c) of the Act at 100% of the tax sought to be evaded, and imposed a penalty of Rs. 37,29,845/- vide order dated 04.01.2024.

7. The assessee preferred an appeal before CIT(A) against the order of penalty. Before the CIT(A), the assessee contended that the claim of bad debts amounting to Rs. 1.18 crores, comprising loan of Rs. 1.13 crores given to M/s Karnavati Securities Pvt. Ltd. and advance of Rs. 5 lakhs for purchase of flat, was fully

disclosed in the audited accounts as well as in the return of income originally filed. It was emphasized that the scrutiny assessment under section 143(3) dated 28.12.2017 was completed after due verification of the said claim and the loss was allowed to be carried forward. It was further contended that while filing the return in response to notice under section 148, the assessee voluntarily disallowed the said bad debts and consequently reduced the loss, even before the reasons for reopening were furnished. The assessee also asserted that no business loss for A.Y. 2015-16 was claimed or carried forward in subsequent assessment years.

8. The assessee further contended that there was neither concealment of particulars of income nor furnishing of inaccurate particulars. According to the assessee, the entire claim was transparently disclosed in the return and audited financial statements. It was also argued that the penalty notice issued under section 274 read with section 271(1)(c) did not specify whether the penalty was initiated for concealment of income or for furnishing inaccurate particulars of income, and therefore the notice suffered from jurisdictional defect.

9. In support of the above contentions, reliance was placed on several judgments of the Hon'ble Supreme Court including *Principal Commissioner of Income Tax (Central) v. Golden Peace Hotels and Resorts (P.) Ltd.*[2021] 124 taxmann.com 249 , *Commissioner of Income-tax (LTU) v. State Bank of India*[2024] 169taxmann.com 305, *Commissioner of Income-tax v. SSA's*

Emerald Meadows[2016] 73taxmann.com 248, and Commissioner of Income-tax v. Suresh Chandra Mittal [2001] 119Taxman 433.

10. The learned CIT(A) reproducing Explanation 1 to section 271(1)(c) in extensor proceeded to examine the applicability of the said Explanation to the facts of the case. The learned CIT(A) held that the assessee had not disclosed the expenditure correctly in the return of income and had not furnished any bona fide explanation with regard to the disallowance of Rs. 1,14,95,901/-. It was further observed that the revision of the return occurred only after departmental enquiry and therefore the conduct of the assessee attracted the deeming fiction under Explanation 1 to section 271(1)(c). The learned CIT(A) also invoked the presumption under illustration (h) of section 114 of the Indian Evidence Act and held that the assessee failed to discharge the onus cast upon it.

11. The learned CIT(A) relied upon the decision of the Hon'ble Supreme Court in K.P. Madhusudhanan v. CIT to hold that the burden lies upon the assessee under Explanation 1 to prove that failure to return correct income was not due to fraud or neglect. Further reliance was placed upon the decision of the Hon'ble Supreme Court in Union of India v. Dharamendra Textile Processors to hold that penalty under section 271(1)(c) is a civil liability and that willful concealment is not an essential ingredient.

12. As regards the additional ground relating to non specification of the limb in the penalty notice, the learned CIT(A) did not accept the contention of the assessee and distinguished the judgments relied upon on the ground that they were rendered on different factual matrix. The learned CIT(A) ultimately held that the assessee had failed to make out a case against the levy of penalty and found no infirmity in the order of the Assessing Officer.

13. Accordingly, the learned CIT(A) confirmed the penalty of Rs. 37,29,845/- levied under section 271(1)(c) and dismissed all the grounds of appeal, thereby dismissing the appeal in entirety.

14. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising following grounds of appeal:

1. *In the facts and circumstances of the case and in law, the order levying penalty u/s. 271(1)( c ) of the I.T. Act, 1961 is bad in law as in the Notice issued for initiating penalty proceedings u/s. 271(1)( c ) of the I.T. Act, 1961 and Order passed , the Learned Assessing Officer has not specified as to which of the two limbs of Sec. 271(1)( c ) i.e. for concealment of particulars of Income or for furnishing inaccurate particulars of Income, for which penalty has been levied.*
2. *The Learned Jurisdictional Assessing Officer (JAO), namely Income-tax Officer, Ward – 6(2)(1), Mumbai has erred in issuing Notice u/s. 148 of the I.T. Act, 1961, which in violation of Provisions of Sec. 151A r.w.s. 144B of the I.T. Act, 1961.*
3. *The Order passed by the Learned Income-tax Officer, National Faceless Appeal Centre, Delhi for A.Y. 2015-16 u/s. 143(3) of the Act read with Section 148 of the Act was time barred and bad in law and therefore the notice u/s. 271(1)( c ) of the Income-tax Act and order passed u/s. 271(1)( c ) of the I.T. Act, 1961 issued pursuant to such an order was bad in law as no such notice can be issued for*

*passing order u/s. 143(3) read with Sec. 147 of the Act itself passed beyond the time limit prescribed under the Act.*

4. *Without prejudice to the above ground of appeal , the penalty levied u/s. 271(1)( c ) of the Act is bad in law as it levied though the return of income filed upon re-opening of the assessment no claim for bad debt was made and that there was no disallowance or concealment of income made while passing Order u/s. 147 r.w.s. 144B of the I.T. Act, 1961.*
5. *The Learned Commissioner of Income-tax (Appeals) National Faceless Appeal Centre, Delhi has erred in confirming the order u/s. 271(1)( c ) of the Act, on the ground of expression of opinion on whether the claim for bad debt is admissible or not.*
6. *On the facts and in the circumstances of the case and in Law, the Learned Assessing Officer erred in confirming the Penalty levied u/s. 271(1)( c ) of the I.T. Act, 1961 for Rs. 37,29,845/- and that too without appreciating fully and properly the facts of the case.*
7. *The Appellant reserves the right to add, delete or amend the above grounds of appeal.*

15. During the course of hearing before us, the learned Authorised Representative (AR) reiterated the factual matrix as borne out from the assessment and appellate records. It was submitted that the Assessing Officer, while completing the reassessment, had treated the claim of bad debts amounting to Rs. 1.18 crores as capital in nature on the ground that the assessee was not engaged in the business of money lending and that the amounts represented capital expenditure. The learned AR pointed out that, in any case, the assessee had, on its own, withdrawn the claim of bad debts in the return of income filed in response to notice under section 148 and consequently reduced the loss originally declared. It was contended that the

reassessment order merely accepted the revised computation and no independent addition was made over and above what was voluntarily disallowed by the assessee. The learned AR placed reliance on the decision of the Co-ordinate Bench in the case of **Archana Achyut Sail v. ITO ITA No.5277 and 5278/Mum/2024** where the Bench categorically held that where no disallowance or addition is made by the Assessing Officer in the income declared in the return filed in response to notice under section 148, penalty under section 271(1)(c) cannot be sustained.

16. The learned AR further invited our attention to the assessment order as well as to the notice issued under section 271(1)(c) dated 28.06.2023 and submitted that the Assessing Officer had not specified as to whether the penalty proceedings were initiated for “concealment of particulars of income” or for “furnishing of inaccurate particulars of income.” It was argued that both the limbs were mentioned in a routine manner without striking off the inapplicable portion, thereby rendering the notice vague and defective. According to the learned AR, such non specification goes to the root of the jurisdiction and vitiates the penalty proceedings. In support of the above contention, reliance was placed on the decision of the Co-ordinate Bench in the case of **Ritu Multitrade Service P. Ltd. in ITA No. 938/Mum/2024**, wherein, on similar facts, the penalty was held to be unsustainable on account of non-specification of the relevant limb in the notice issued under section 274 read with section

271(1)(c) of the Act. It was thus submitted that the impugned penalty deserved to be deleted on this preliminary legal ground itself.

17. Per contra, the learned Departmental Representative supported the orders of the Assessing Officer as well as the learned CIT(A). It was submitted that the assessee had originally claimed bad debts amounting to Rs. 1.18 crores in the return filed under section 139(1) and the same had resulted in substantial reduction of taxable income by way of loss. According to the learned DR, the assessee withdrew the claim only after issuance of notice under section 148 and not suo motu prior thereto. The learned DR contended that but for the reopening proceedings initiated by the Assessing Officer, the assessee would not have disallowed the bad debts. It was thus argued that the voluntary withdrawal of the claim in the return filed in response to notice under section 148 does not absolve the assessee from the rigours of section 271(1)(c), since the revised computation was prompted by detection and departmental action.

18. The learned Authorised Representative further submitted that even assuming without admitting that the claim of bad debts was not allowable, the resultant effect was only reduction of the business loss declared for the year. It was contended that the reassessment order merely reduced the loss from Rs. 1,15,25,958/- to Rs. (-) 30,057/- and there was no positive income assessed. The learned AR pointed out that the reduced loss was not carried forward or set off by the assessee in any of

the subsequent assessment years. It was emphasized that the assessee had not claimed any set off of the loss of A.Y. 2015-16 in the returns filed for subsequent years and therefore no tax advantage was ultimately derived from the original claim. In this background, it was argued that the entire exercise was revenue neutral and there was no loss to the Revenue. According to the learned AR, where the claim does not result in any actual tax evasion and the reduced loss has not been utilized in subsequent years, the essential ingredient for levy of penalty under section 271(1)(c) is absent. It was therefore submitted that the penalty levied is unjustified both on facts and in law.

19. The learned Authorised Representative further assailed the very validity of the reassessment proceedings and submitted that the assessment is barred by limitation. It was contended that the notice under section 148 of the Act was issued on 29.07.2022 for A.Y. 2015-16, which is beyond the permissible time limit prescribed under the Act. On this premise, it was argued that the reassessment order itself is void ab initio and consequently the penalty proceedings initiated on the basis of such reassessment cannot survive.

20. We have carefully considered the rival submissions, perused the orders of the lower authorities and examined the judicial precedents relied upon by both sides. The controversy before us lies within a narrow compass, namely, whether penalty under section 271(1)(c) of the Act can be sustained in a case where (i) the assessee, in the return filed in response to notice under

section 148, has itself withdrawn the claim of bad debts and reduced the loss, and (ii) the reassessment order does not make any addition or disallowance over and above the income declared in such return.

21. It is an admitted factual position that the assessee had originally filed return under section 139(1) declaring loss of Rs. 1,15,25,958/-. The assessment under section 143(3) dated 28.12.2017 accepted the said loss. Subsequently, notice under section 148 dated 29.07.2022 was issued. In response thereto, the assessee filed return on 26.08.2022 disallowing the bad debts of Rs. 1.18 crores and consequently returned a loss of Rs. (-) 30,057/-. The reassessment order dated 02.05.2023 passed under section 143(3) read with sections 147 and 144B accepted the returned figure without making any further addition. Thus, there is no dispute that no addition was made by the Assessing Officer over and above the income declared in the return filed pursuant to notice under section 148.

22. In this factual background, the ratio laid down by the Co-ordinate Bench in ***Archana Achyut Sail v. ITO (supra)*** becomes directly applicable. In the said decision, the Tribunal, after following the judgment of the Hon'ble Calcutta High Court in ***CIT v. Brijendra Gupta[2015] 61 taxmann.com 180***, categorically held that where there is no disallowance or addition made by the Assessing Officer in the income disclosed in pursuance of notice under section 148, no penalty can be levied under section 271(1)(c). The relevant finding in para 15 records that in such

circumstances, penalty under section 271(1)(c) “could not have been levied”.

23. Applying the above principle to the present case, we find that the reassessment order merely accepted the income as declared by the assessee in response to notice under section 148. The alleged concealment, as computed by the Assessing Officer, is nothing but the difference between the originally returned loss and the revised loss. However, once the return filed under section 148 has been accepted without further variation, there remains no addition or disallowance which could form the foundation for levy of penalty under section 271(1)(c). The very basis of the penalty thus becomes unsustainable.

24. Further, we find merit in the legal contention raised by the assessee regarding non specification of the limb in the penalty notice. The notice issued under section 274 read with section 271(1)(c) does not clearly specify whether penalty proceedings were initiated for concealment of particulars of income or for furnishing inaccurate particulars of income. The co-ordinate Bench in ***Ritu Multitrade Services (P.) Ltd. v. ITO reported in 164 taxmann.com 121*** has held that where the penalty notice does not specify the charge under which penalty is initiated, the same is not a valid communication and penalty is liable to be deleted. The Co-ordinate Bench therein, following the judgment of the Hon'ble Bombay High Court in ***Mohd. Farhan A. Shaikh [125 taxmann.com 253]***, observed that a contravention of a

mandatory requirement for a valid communication is fatal and the notice must be precise and unambiguous.

25. In the present case also, the notice suffers from the same defect. The Assessing Officer has not struck off the inapplicable limb and has not made the charge explicit. In view of the binding judicial precedent of the Hon'ble Jurisdictional High Court as followed by the co-ordinate Bench, such defect goes to the root of the matter and vitiates the penalty proceedings.

26. We also note that the assessee has contended that the reduced loss was not carried forward or set off in subsequent years and therefore no tax advantage was ultimately derived. While revenue neutrality by itself may not be determinative in every case, it reinforces the absence of any deliberate attempt to evade tax in the peculiar facts before us.

27. As regards the arguments advanced by the learned CIT(A) invoking Explanation 1 to section 271(1)(c) and relying upon the decisions in ***K.P. Madhusudhanan and Dharamendra Textile Processors***[118 Taxman 324], we are of the considered view that those principles would apply where there is an addition or disallowance sustained in assessment giving rise to deemed concealment. In the present case, however, once the reassessment order has not made any addition over and above the income returned under section 148, the foundational requirement for invocation of Explanation 1 itself is absent.

28. In view of the foregoing discussion and respectfully following the judicial precedents relied on, we hold that the penalty under section 271(1)(c) is not leviable. Independently, the penalty notice suffers from the vice of non-specification of the charge, rendering the proceedings invalid. Accordingly, the penalty of Rs. 37,29,845/- levied under section 271(1)(c) and confirmed by the learned CIT(A) is hereby deleted.

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

Order pronounced in the open court on 23.02.2026.

**Sd/-**  
**(SAKTIJIT DEY)**  
**VICE PRESIDENT**

**Sd/-**  
**(MAKARAND VASANT MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated 23/02/2026  
Dhananjay, Sr.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