

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
& SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

I.T.A. No.1607/Ahd/2019
(Assessment Year: 2013-14)

Ajay Mayor, The Retreat, Opp. Under Bridge, Shahibaug, Ahmedabad-380004	Vs.	Deputy Commissioner of Income Tax, Circle-1(2), Ahmedabad
[PAN No.AKWPM6450E]		
(Appellant)	..	(Respondent)

Appellant by :	Shri S. N. Soparkar, Sr. Adv. & Ms. Ukti Shah, ARs
Respondent by:	Shri C Dharani Nath, Sr. DR

Date of Hearing	10.03.2026
Date of Pronouncement	13.03.2026

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals)-10, (in short “Ld. CIT(A)”), Ahmedabad vide order dated 28.08.2019 passed for A.Y. 2013-14.

2. The assessee has taken the following grounds of appeal:

“1. Ld. CIT(A) erred in confirming penalty of Rs. 82,91,261/- by invoking provision/s 271(1)(c) of the Act ignoring submission of the appellant that there is neither concealment of income nor furnishing inaccurate particulars of income which leads to invocation of penalty.

2. Ld. CIT(A) failed to appreciate that ld. AO failed to record proper satisfaction as to penalty for concealment of income or furnishing inaccurate particulars of income and without proper satisfaction penalty order required to be quashed. It be so held now.

3. Ld. CIT(A) ought to have considered that amount received on dissolution of trust is capital receipt whereas it is treated as revenue in nature so dispute is debatable in nature and accordingly no penalty can be leviable.

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4. *Ld. CIT(A) failed to appreciate that in "Schedule FA" in return of income, appellant has disclosed in column by selecting "YES" and this shows bona fide on the part of the assessee and accordingly penalty is required to be deleted. It be so held now."*

3. The brief facts of the case are that the Assessing Officer initiated penalty proceedings against the assessee under section 271(1)(c) of the Income-tax Act, 1961 ("the Act") on the ground that the assessee had furnished inaccurate particulars of income and had concealed the particulars of income. During the course of assessment proceedings, the Assessing Officer observed that the assessee had received a sum of Rs.2,43,93,238/- from **Mimosa Trust**, a foreign trust established by Mr. Harry Holzman and administered by Pirunico Trustees (Jersey) Ltd. The Assessing Officer observed that the said amount received by the assessee was taxable in India and accordingly brought the same to tax under the provisions of the Act. According to the Assessing Officer, the assessee had not properly disclosed the said receipt in the return of income and therefore had furnished inaccurate particulars of income. On this basis, penalty proceedings under section 271(1)(c) were initiated and the Assessing Officer imposed a penalty of Rs.82,91,261/- holding that the assessee had concealed income and furnished inaccurate particulars in respect of the amount received from the foreign trust.

4. Aggrieved by the penalty order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) and challenged the imposition of penalty. The assessee contended that there was full disclosure of the amount received from Mimosa Trust in the return of income and in the notes accompanying the return. It was submitted that the receipt was treated by the assessee as a capital receipt and the complete particulars of the transaction had been furnished before the Assessing Officer during the assessment

proceedings. The assessee further submitted that that the addition made by the Assessing Officer was only on account of a difference of opinion regarding the taxability of the receipt and therefore the same could not be treated as concealment of income. In support of this contention, the assessee placed reliance on the decision of the Special Bench of the Ahmedabad Tribunal in **Gujarat Credit Corporation vs. ACIT (2008) 113 ITD 133 (Ahmedabad SB)**, wherein it was held that mere rejection of a claim made by the assessee does not automatically lead to the conclusion that the assessee has concealed income or furnished inaccurate particulars. The assessee also relied upon the decision in the case of **Shri Prakashchandra S. Soni HUF vs. ACIT, ITA Nos. 1445 and 1597/Ahd/2014**, wherein the Tribunal held that penalty cannot be levied where the addition itself is made under a different head of income than what was originally considered by the Assessing Officer. The assessee further contended that the notice issued under section 274 read with section 271(1)(c) was defective since it did not specify whether the penalty proceedings were initiated for concealment of income or for furnishing inaccurate particulars, and therefore reliance was placed on the decision in **CIT vs. SSA's Emerald Meadows (2016) 73 taxmann.com 241 (SC)**.

5. The CIT(Appeals), however, was not convinced with the explanations furnished by the assessee and rejected the arguments raised. The CIT(Appeals) observed that the amount received by the assessee from Mimosa Trust was clearly taxable in India under the provisions of the Act and that the assessee had failed to disclose the complete details of the transaction in the relevant columns of the return of income, particularly in the

column relating to foreign assets and financial interests. According to the CIT(Appeals), the assessee had not come forward with the full facts relating to the receipt of the amount from the foreign trust at the stage of filing the return of income and the details came to light only during the assessment proceedings when the Assessing Officer examined the matter in detail. The CIT(Appeals) further observed that the assessee had attempted to claim refund while not disclosing the full particulars of the receipt and therefore the conduct of the assessee indicated an intention to conceal income. The CIT(Appeals) also rejected the argument that the issue was merely a debatable one, holding that the receipt from the foreign trust was clearly taxable under section 56(2)(vii) of the Act as income from other sources since it was received without consideration. The CIT(Appeals) also referred to the decision of the Hon'ble Supreme Court in **Mak Data Pvt. Ltd. vs. CIT (2013) 38 taxmann.com 448 (SC)** and **K.P. Madhusudhanan vs. CIT (2001) 251 ITR 99 (SC)** to hold that voluntary disclosure or explanation offered by the assessee does not automatically absolve the assessee from penalty where the explanation is not substantiated by credible evidence. In view of these findings, the CIT(Appeals) upheld the penalty imposed by the Assessing Officer under section 271(1)(c) of the Act and dismissed the appeal filed by the assessee.

6. The assessee is in appeal before us against the order passed by CIT(Appeals) dismissing the appeal of the assessee.

7. Before us, the ld. counsel for the assessee drew our attention the relevant pages of the Paper-Book and submitted that vide letter dated 09.03.2018 addressed to the Assessing Officer, the assessee had made full

and complete disclosure in the return of income with respect to this amount received by the assessee. The ld. counsel for the assessee submitted that that the amount was not included as income in the return of income filed by the assessee on the basis of legal advise obtained by the assessee that this amount qualified as a capital receipt and hence not taxable in the hands of the assessee. Further, there were no direct case laws on the subject which had been decided against the assessee on this issue, which would have necessitated the assessee taking a different view. Further, the ld. counsel for the assessee drew our attention to pages 99 and 103 of Paper-Book, wherein the Ahmedabad ITAT referred the taxability of the said amount to a Special Bench of the ITAT in view of decision of Mumbai ITAT in the case of Dwarka Prasad v ITO in ITA Number 4591 and 4592/Mum/2016 vide order dated 05.10.2017 wherein Mumbai ITAT held that distribution out of corpus funds is a capital receipt not liable to tax in the hands of the assessee. The reference to Special Bench of the ITAT in the assessee's own case clearly demonstrates that the taxability of the said amount involves a debatable issue and therefore there is no question of levy of penalty u/s 271(1)(c) of the Act.

8. In response, Ld. DR placed reliance on the observations made by CIT(Appeals) in the appellate order.

9. We have heard the rival contentions and perused the material on record.

10. The issue before us is with respect to the levy of penalty under section 271(1)(c) of the Act on account of the amount received by the assessee from Mimosa Trust, which according to the Assessing Officer was liable to tax and

therefore the assessee was alleged to have concealed income or furnished inaccurate particulars of income. After carefully examining the facts of the case, we are unable to concur with the findings of the lower authorities sustaining the penalty.

11. At the outset, we observe it is an undisputed fact emerging from the record that the assessee had made disclosure regarding the receipt from Mimosa Trust in the return of income as well as in the notes accompanying the return. The assessee had taken a specific legal position that the amount received from the foreign trust represented a capital receipt and therefore was not chargeable to tax in India. It is also evident from the material placed on record that during the course of assessment proceedings the assessee furnished complete details of the said receipt and explained the nature and source of the transaction before the Assessing Officer. Therefore, the addition made by the Assessing Officer cannot be said to have arisen on account of any suppression of facts or non-disclosure of material particulars by the assessee.

12. It is well settled that penalty proceedings under section 271(1)(c) of the Act are distinct from assessment proceedings and the mere fact that an addition has been made in the assessment order does not automatically lead to the conclusion that the assessee has concealed income or furnished inaccurate particulars. The Hon'ble Supreme Court in the case of **CIT vs. Reliance Petroproducts (P.) Ltd. (2010) 322 ITR 158 (SC)** has categorically held that making an incorrect claim in law cannot amount to furnishing inaccurate particulars of income. The Court held that where all the facts relating to the claim are disclosed in the return of income and the claim

is made under a bona fide belief, the same cannot attract penalty merely because the claim is not accepted by the Assessing Officer. In the present case also, the assessee had disclosed the receipt and had taken a legal view that the same constituted a capital receipt not chargeable to tax. Merely because the Assessing Officer did not accept the legal position taken by the assessee, the same cannot be a ground to impose penalty under section 271(1)(c) of the Act.

13. Further, we also find merit in the contention of the assessee that the issue regarding taxability of the receipt from Mimososa Trust itself was a highly debatable issue. The learned counsel for the assessee has brought to our notice that the Ahmedabad Bench of the Tribunal in the assessee's own case had referred the issue of taxability of such receipts to a Special Bench of the Tribunal in view of the conflicting judicial views on the subject. The Mumbai Bench of the Tribunal in **Dwarka Prasad vs. ITO, ITA Nos. 4591 & 4592/Mum/2016** had taken a view that distribution out of the corpus of a trust constitutes a capital receipt and is not liable to tax in the hands of the beneficiary. The fact that the Tribunal itself considered it necessary to refer the issue to a Special Bench demonstrates that the taxability of such receipts is a contentious and debatable issue on which divergent views exist. When the underlying issue itself is debatable and subject to interpretation of law, it cannot be said that the assessee had either concealed income or furnished inaccurate particulars so as to warrant the levy of penalty.

14. In this regard, reference may also be made to the decision of the Ahmedabad Special Bench of the Tribunal in **Gujarat Credit Corporation Ltd. vs. ACIT (2008) 113 ITD 133 (Ahmedabad SB)** wherein it was held

that mere rejection of a claim made by the assessee does not lead to the inference that the assessee has concealed income or furnished inaccurate particulars. The Special Bench further observed that penalty provisions are penal in nature and the burden lies upon the Department to establish that the assessee has deliberately concealed income or furnished inaccurate particulars. In the present case, we find that the Department has not brought any material on record to demonstrate that the explanation furnished by the assessee was false or lacking in bona fides.

15. Further support for this view can also be drawn from the decision of the Hon'ble Supreme Court in **Price Waterhouse Coopers Pvt. Ltd. vs. CIT (2012) 348 ITR 306 (SC)** wherein the Court held that where the assessee has disclosed all material facts and the error arises on account of a bona fide interpretation or inadvertent mistake, the same would not attract penalty under section 271(1)(c) of the Act.

16. Considering the totality of the facts and circumstances of the case, it is evident that the assessee had made full disclosure of the transaction and had taken a legal view based on professional advice that the amount received from the foreign trust constituted a capital receipt not liable to tax. The issue itself being debatable and having been referred to a Special Bench of the Tribunal further reinforces the bona fide nature of the claim made by the assessee. In such circumstances, the essential ingredients required for invoking the provisions of section 271(1)(c) of the Act are absent.

17. Accordingly, in view of the judicial principles laid down by the Hon'ble Supreme Court in **CIT vs. Reliance Petroproducts (P.) Ltd. (322**

ITR 158), Price Waterhouse Coopers Pvt. Ltd. vs. CIT (348 ITR 306) and the decision of the Special Bench of the Tribunal in Gujarat Credit Corporation Ltd. vs. ACIT (113 ITD 133), we hold that the penalty levied under section 271(1)(c) of the Act is not sustainable in the facts of the present case.

18. Accordingly, the Assessing Officer is directed to delete the penalty of Rs.82,91,261/- levied under section 271(1)(c) of the Income-tax Act, 1961.

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

This Order is pronounced in the Open Court on	13/03/2026
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Sd/-

(NARENDRA P. SINHA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 13/03/2026

TANMAY, Sr. PS

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

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

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad