

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

**BEFORE SHRI. OM PRAKASH KANT, AM
AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 366 to 368/Mum/2025
(Assessment Year: 1999-2000, 2001-02 & 2002-03)

Anatek Services Pvt. Ltd. 8, Valmiki Apartments, CST Road, Santacruz, Mumbai – 400098.	Vs.	Income Tax Officer – 14(1)(1) Income Tax Officer, Ayakar Bhavan, Mumbai – 400020.
PAN/GIR No. AAACA9079Q		
(Appellant)	:	(Respondent)

Assessee by	:	Shri. Haridas Bhat
Respondent by	:	Shri. Ram Krishn Kedia (SR. DR.)

Date of Hearing	:	12.03.2025
Date of Pronouncement	:	30.04.2025

ORDER

Per Kavitha Rajagopal, J M:

These captioned appeals filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) 51, Mumbai ('ld. CIT(A)' for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 1999-2000, 2001-02 & 2002-03.

2. As the grounds are identical in all these appeals, we hereby pass a consolidated order by taking ITA No. 366/Mum/2025 as a lead case.

ITA No. 366/Mum/2025, A.Y. 1999-2000

3. The assessee has raised the following grounds of appeal:

“GROUND I

On the facts and circumstances of the case, Commissioner of Income (the CIT Appeals) erred in confirming the penalty of Rs.9,91,029/- u/s 271(1)(c) of the Income Tax Act 1961 ignoring the fact that the Notice U/s 274 did not specify reason whether concealment of Income or furnishing of inaccurate particulars.

Appellant prays that therefore the levy of penalty is bad at law and may please be deleted.

GROUND II

A. On the facts and circumstances of the case, Commissioner of Income Tax Appeals (the CIT Appeals) erred in confirming the penalty of Rs.9,91,029/-u/s 271(1)(c) of the Income Tax Act 1961.

B. The CIT Appeals erred in confirming the penalty ignoring the fact that the revised returned income was accepted offering the additional income to tax without the Income Tax Officer finding out any cogent material.

C. Your appellant prays that the penalty levied may please be deleted.”

4. The Id. AR for the assessee during the appellate proceedings prayed that the ground no. 1 of the present appeal may be treated as additional ground which challenges the penalty proceeding on the legality of the notice issued u/s. 274 of the Act, which is without striking of the irrelevant limb as to whether the same is for concealment of income or for furnishing of inaccurate particulars. As the additional ground raised by the assessee goes to the root of the case, we hereby admit the same in accordance with the proposition laid down by the Hon'ble Apex Court in the case of ***National Thermal Power Corporation vs. CIT (1999) 97 Taxmann.com 358/(1998) 229 ITR 383 (SC)***, where the additional ground does not require any further enquiry by the lower authorities.

5. Brief facts of the case are that the assessee is engaged in the business of buying and selling of analytical instruments and technical services thereon and the assessee had filed its return of income dated 30.11.2019, declaring total income at Rs. 52,48,850/- along with the audited statement of P & L account, balance sheet and tax audit report in form 3CA and CD. The return of income was processed u/s. 143(1) of the Act, dated 27.07.2000. Subsequently, the assessee filed its revised return on 06.02.2003, declaring total income at Rs. 80,81,210/-, pursuant to a survey action conducted u/s. 133 of the Act on 02.01.2003. The learned Assessing Officer ('ld. A.O.' for short) observed that the assessee has declared the additional income of Rs. 28,32,360/- in its revised return which was then added as undisclosed income and the assessment order dated 21.01.2005 was passed by the ld. AO u/s. 143(3) r.w.s. 147, where the total income was determined at Rs. 81,06,439/-. The ld. AO initiated penalty proceeding u/s. 271(1)(c) of the Act, for failure to disclose fully and truly the correct income as per the original return. The ld. AO then passed the penalty order u/s. 271(1)(c) of the Act levying a penalty of Rs. 9,91,029/- u/s. 271(1)(c) of the Act for concealment of income amounting to Rs. 28,31,505/-.
6. Aggrieved the assessee was in appeal before the first appellate authority, who vide order dated 03.12.2024 upheld the penalty levied by the ld. AO.
7. The assessee is in appeal before us, challenging the impugned order of the ld. CIT(A).
8. The ld. AR for the assessee commenced his arguments on the additional ground challenging the notice u/s. 274 r.w.s. 271, where the ld. AO has failed to strike out the irrelevant limb, thereby failing to comply with the statutory requirement of conveying

to the assessee, whether the penalty was initiated for concealment of particulars of income or for furnishing inaccurate particulars of income. For this, the ld. AR relied on the Full Bench decision of the Hon'ble Jurisdictional High Court in the case of ***Mohammad Farhan Shaikh vs. Deputy Commissioner of Income Tax, 320 CTR 26 (Bombay HC)*** and ***Omprakash T. Mehta vs. Income Tax Officer, (Bombay HC), 316 CTR 280.***

9. The learned Departmental Representative (ld. DR for short) on the other hand controverted the said fact and stated that there was no prejudice caused to the assessee and relied on the decision of the lower authorities.
10. We have heard the rival submissions and perused the materials available on record. The only moot question to be decided in this is whether the impugned penalty notice issued u/s. 274 r.w.s. 271 of the Act, is liable to be quashed on the ground that there was non-application of mind by the ld. AO for non-striking of the irrelevant limb and whether the same violates the principles of natural justice. It is observed that the impugned notice issued by the ld. AO is no doubt without striking the irrelevant limb as to whether the penalty was for concealment of income or for furnishing inaccurate particulars of income. This issue is no longer *res integra*, where the full bench of the Hon'ble Jurisdictional High Court in the case of ***Mohammad Farhan Shaikh (supra)*** has held that not striking of the irrelevant limb in the notice is not a mere procedural defect but the same would vitiate the entire penalty proceeding. It was further held that the assessment proceeding which form the basis for the penalty proceeding which is corollary to the assessment proceeding culminates under different statutory schemes

which are distinct from each other. For this purpose, the statutory notice u/s. 271(1)(c) r.w.s. 274 of the Act must be in such a way that the assessee is given notice as to the grounds of the penalty proceedings. Further, it held that the penalty provisions even if it is in the nature of civil consequences should be construed strictly without any ambiguity and in case of ambiguity, the same has to be resolved in favour of the assessee. The Hon'ble High Court also held that even if the assessment order contains the reason for the initiation of penalty, the same cannot be a justification to cure the defect in the penalty proceedings. It was held that non striking of the irrelevant limb is a mandatory condition which when contravened becomes fatal to the revenue. Thus, an omnibus show cause notice would tantamount to non-application of mind and resulting in prejudice caused to the assessee. It is held to be in violation of the principles of natural justice which is *ultra virus* to Article 14 of the Constitution.

11. Here, in the present case, the revenue has not brought any contradictory facts to disprove that the impugned notice caused prejudice to the assessee. Pertinently, the assessment order is also silent as to the reason for the initiation of the penalty, though the final penalty order passed u/s. 271(1)(c) specifies that the same is for concealment of particulars of income and therefore the penalty proceeding shall be vitiated for the above said reasons. By respectfully following the decisions relied upon by the Id. AR, we hold that the penalty order passed u/s. 271(1)(c) of the Act is bad in law and not sustainable. We therefore allow ground no. 1 raised by the assessee by directing the Id. AO to delete the penalty levied on the assessee. As we have decided this issue on the

legal ground, the other grounds of appeal on the merits raised by the assessee are rendered academic and are hence not adjudicated.

12. In the result, the appeal filed by the assessee is allowed.

ITA No. 368/Mum/2025, A.Y. 2002-03

13. As the facts are identical, as that of ITA No. 366/Mum/2025, where in the impugned notice dated 20.01.2005, the Id. AO has not struck off the irrelevant limb, the finding given in ITA No. 366/Mum/2025 will apply mutatis mutandis to this appeal also.

14. In the result, the appeal filed by the assessee is allowed.

ITA No. 367/Mum/2025, A.Y. 2001-02

15. The present appeal filed by the assessee challenges the penalty levied u/s. 271(1)(c) of the Act amounting to Rs. 12,12,237/- by the Id. AO and upheld by the Id. CIT(A). Though the assessee has raised the legal ground on non-striking of the irrelevant limb in the notice u/s. 274 r.w.s. 271 of the Act, during the appellate proceeding, the Id. AR for the assessee fairly agreed that the copy of the impugned notice was not available with the assessee and in the absence of the same, we declined to decide the issue on the legal ground. We therefore proceed to decide this issue on the merits of the case which is challenged vide ground no. II raised by the assessee.

16. Briefly stated, the assessee filed its return of income dated 30.10.2001, declaring total income at Rs. 94,31,670/- and the same was processed u/s. 143(1) of the Act. Pursuant to a survey action conducted u/s. 133A dated 02.01.2003, the assessee filed a revised return on 06.02.2003 declaring total income at Rs. 1,24,96,740/- where an additional income of Rs. 30,65,075/- was declared. The Id. AO passed the assessment order dated

27.02.2004, u/s. 143(3) of the Act, determining total income at Rs. 1,25,49,430/-, after making an addition on the undisclosed income as per survey action u/s. 133A amounting to Rs. 30,65,075/-. The ld. AO initiated penalty proceeding u/s. 271(1)(c) of the Act, vide notice u/s. 274 r.w.s. 271(1)(c) and vide order dated 16.08.2004 levied a penalty of Rs. 12,12,237/- u/s. 271(1)(c) of the Act, for concealment of income to the tune of Rs. 30,65,075/-.

17. Aggrieved the assessee was in appeal before the first appellate authority, who vide order dated 03.12.2024, upheld the penalty levied by the ld. AO.

18. The assessee is in appeal before us, challenging the order of the ld. CIT(A).

19. We have heard the rival submissions and perused the materials available on record. It is observed this is the second round of the litigation by the assessee, where the facts reveal that the assessee received penalty order for three assessment years and to put an end to the litigation the assessee paid the entire penalty amount. Thereafter, the assessee received notice as to why prosecution should not be initiated against the assessee almost after 8 years, after which the assessee filed an appeal before the ld. CIT(A) with a delay of more than 8 years. The ld. CIT(A) and subsequently the Tribunal had rejected the assessee's appeal failing to condone the inordinate delay. In an appeal before the Hon'ble High Court relief was granted on the delay condonation and the appeal was heard by the ld. CIT(A) and dismissed on the merits. The present appeal is filed against the order of the ld. CIT(A).

20. The ld. AR for the assessee contended that the assessee has voluntarily declared the additional income subsequent to the survey and therefore penalty was not warranted,

thereby claiming immunity from levying penalty. The Id. AR reiterated that it was an act of voluntary disclosure on the part of the assessee for which the assessee has already offered the same to tax and is not a case of concealment of income. The Id. AR relied on the decision of the Hon'ble Bombay High Court in the case of ***Principal of Commissioner of Income Tax vs. M/s. Richardson and Cruddas (1972) Ltd., ITA No. 1101 of 2016, order dated 09.01.2019*** and decision of Hon'ble Delhi High Court in the case of ***CIT vs. SAS Pharmaceuticals, order dated 08.04.2011, (2011) 335 ITR 259 (Del.)***.

21. The Id. DR on the other hand vehemently opposed to the contentions of the Id. AR and stated that had there been no survey action, the assessee would not have declared the additional income. The Id. DR further stated that the additional income was part of the bogus transaction availed by the assessee which was unearthed during the survey action. The Id. DR hence contended that it was an intentional case of concealment and not a bonafide mistake on the part of the assessee. The Id. DR relied on the decision of the Hon'ble Calcutta High Court in the case of ***CIT Balarampur Chini Milks Ltd. [2015] 64 taxmann.com 91 (Calcutta)***, where on identical facts the Hon'ble High Court upheld the penalty levied on the assessee. The Id. DR also relied on the decision of the Hon'ble Apex Court in the case of ***MAK Data Pvt. Ltd. vs. CIT, [2013] 38 taxmann.com 448 (SC)***, where it was held that voluntary disclosure during search action does not amount to non-concealment of income. The Id. DR relied on the order of the lower authorities.
22. In the above factual matrix of the case, the only issue that requires adjudication is whether the assessee offering additional income, post survey action vide revised return

would result in levying of penalty for concealment of income or not. There is no denial of fact that the assessee has availed accommodation entry by way of bogus purchases which was subsequently offered to tax after the survey action conducted in the case of the assessee u/s. 133A of the Act. The Id. AR placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of ***Richardson and Cruddas (1972) Ltd.*** (*supra*) and Hon'ble Delhi High Court decision in the case of ***SAS Pharmaceuticals*** (*supra*), for the proposition that when there is surrendered of income post survey action, the same always does not tantamount to concealment of income. On perusal of the said decisions, it is evident that the Hon'ble High Courts have held that in case where there is a mistake or by oversight the assessee has failed to disclose certain particulars of income and without intentional concealment or non-disclosure of particulars of income, the same cannot be held to be ground for levy of penalty for concealment or non-disclosure. Mere discrepancies found during survey cannot attract penalty only on surmises and conjectures that there was concealment of income. But in the present case in hand, the assessee has offered additional income in all the 3 assessment years post survey and has also not brought anything on record to show that the additional income was not part of bogus transaction as alleged by the department. Further, there could be possibilities of error or discrepancy in the return of income filed by the assessee for one year but there cannot be presumption that in all the three impugned years there was error or mistake in the return of income filed by the assessee, that to not for any meager amount. Further, we would like to place our reliance on the decision of the Hon'ble Apex Court in the case of ***MAK Data Pvt. Ltd.*** (*supra*) which was extensively relied

upon by the Id. DR, where it was held that surrender of income merely does not absolve the assessee from penalty proceeding unless the assessee has discharged the burden to establish that the concealment was unintentional and not malafide. The relevant extract of the said decision is cited herein under for ease of reference:

“7. The AO, in our view, shall not be carried away by the plea of the assessee like "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc. to explain away its conduct. The question is whether the assessee has offered any explanation for concealment of particulars of income or furnishing inaccurate particulars of income. Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise.

8. Assessee has only stated that he had surrendered the additional sum of Rs.40,74,000/- with a view to avoid litigation, buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the income tax department. Statute does not recognize those types of defences under the explanation 1 to Section 271(1)(c) of the Act. It is trite law that the voluntary disclosure does not release the Appellant-assessee from the mischief of penal proceedings. The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty.

9. We are of the view that the surrender of income in this case is not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. AO during the course of assessment proceedings has noticed that certain documents comprising of share application forms, bank statements, memorandum of association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer deeds duly signed, have been impounded in the course of survey proceedings under Section 133A conducted on 16.12.2003, in the case of a sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it is clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The AO, in our view, has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act, 1961.

10. The AO has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing. The scope of Section 271(l)(c) has also been elaborately discussed by this Court in Union of India v. Dharmendra Textile Processors [2008] 13 SCC 369 and CIT v. Atul Mohan Bindal [2009] 9 SCC 589.

11. The principle laid down by this Court, in our view, has been correctly followed by the Revenue and we find no illegality in the department initiating penalty proceedings in the instant case. We, therefore, fully agree with the view of the High Court. Hence, the appeal lacks merit and is dismissed. There shall be no order as to costs."

23. We would also draw support from the decision of the Hon'ble Delhi High Court in the case of ***Principal Commissioner of Income Tax – 21 vs. DR. Vandana Gupta (2018) 92 taxmann.com 229 (Delhi) (dated 20.02.2018)***, wherein it was held that voluntary surrender of income during the survey without substantiating the source would attract penalty for concealment. It also held that the explanation 1 to 271(1)(c) does not recognize such kind of defense, even if the assessee contends that the surrender of income was to avoid litigation, buy peace or for amicable settlement with the department.
24. It is also observed that the explanation 1 to Section 271(1) raises a presumption of concealment, where the assessee if fails to offer an explanation or the explanation offered by him is considered to be false or fails to substantiate that the explanation is bonafide, to the satisfaction of the Id. AO, then it is deemed that the said income has been concealed. In the present case in hand, we do not find any justification in holding that the concealment of additional income declared by the assessee in its revised return is unintentional or is merely an error or mistake crept in in the original return of income filed by the assessee. The assessee has also failed to substantiate the same.
25. From the above observation, we are of the considered view that the penalty levied by the Id. AO and upheld by the Id. CIT(A) holds merit and does not require any



interference. There is no reason to deviate from the same and we therefore are inclined to dismiss the grounds of appeal raised by the assessee.

26. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 30.04.2025

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated: 30.04.2025
Karishma J. Pawar (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai