



IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: DR. BRR Kumar, Vice President
And Shri T. R. Senthil Kumar, Judicial Member**

**ITA No: 1263/Ahd/2025
Assessment Year: 2013-14**

The Assistant Commissioner of Income Tax, Circle-1(1)(1), Vadodara (Appellant)	Vs	M/s. Radhika Jewellers 14-16, Indrapuri Complex, New Sama Road, Vadodara-390008 Gujarat PAN: AAHFR2958M (Respondent)
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**Revenue Represented: Shri Rajenkumar M Vasavda, Sr. D.R.
Assessee Represented: Shri Tushar Hemani, Sr. Adv. &
Shri Kushal Fofaria, A.R.**

Date of hearing : 05-01-2026
Date of pronouncement : 07-01-2026

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue as against appellate order dated 28.03.2025 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the penalty order levied under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2013-14.

2. Brief facts of the case is that the assessee is a Partnership Firm engaged in the business of manufacturing and trading in gold, silver and diamond ornaments as well as making jewellery in the name of Radhika Jewellers. A survey action under section 133A of the Act was conducted in the business premises of the assessee on 19-10-2012. During the course of survey, the assessee admitted unaccounted income to the tune of Rs. 2,01,00,050/- on account of difference in stock of gold, silver ornaments, bullion as well as excess cash found. For the Asst. Year 2013-14, assessee filed its Return of Income on 28-09-2013 declaring total income of Rs.2,49,56,560/- which includes the above admitted income. Regular assessment was completed on 28-01-2016 assessing the income at Rs.2,50,87,820/- after making total addition of Rs.1,31,263/-. Thereafter Penalty proceedings were also initiated on the additional unaccounted income which was admitted during the course of survey action. The assessee filed its reply that there is no change in the “returned income” and the “assessed income” and there is no question of any concealment of income, therefore the penalty proceedings liable to be dropped. However, the assessing officer not accepted the above reply and imposed minimum penalty of Rs.62,11,054/- under section 271(1)(c) of the Act.

3. Aggrieved against the penalty order, assessee filed an appeal before Ld. CIT(A) who deleted the penalty by holding that additional income surrendered by the assessee during the survey action and the same was declared in the regular Return of Income which was

filed within the prescribed time, hence no penalty would be exigible in such cases by observing as follows:

“The main crux of the submissions made by the appellant is that penalty on the amount disclosed during survey proceedings cannot be levied for the reason that

a) it was a voluntary declaration and

b) as on date of survey, the financial year was not yet over and therefore the amount declared during survey constituted the income of the year under consideration.

The appellant further states that the income admitted during survey is shown in the return of income and is accepted during assessment proceedings. The appellant further states that there is no concealment, no inaccurate particulars in respect of the Income declared during survey proceedings. Further, the addition made to the return Income, is of Rs.1,31,263/- which comprises of disallowance on account of PF (31,950/-), subscription expenses (Rs.6000/-) and out of car and petrol expenses (Rs.93,313/-). The AO has, in para 5 of the penalty order, tried to justify the levy of penalty on the additional income declared during survey proceedings. The reasoning offered by the AO is that the amount declared was detected consequent to the survey proceedings and that this amount would not have been brought to tax, had no survey taken place in this case. This logic of the AO while levying penalty does not hold good, as the declared income represented the income of the year which was not yet closed as on date of survey. Further, the appellant has, in its submissions (reproduced above), relied on the various judgments, which in a nutshell state that where certain income is surrendered by the assessee during survey and the same was shown by it in regular return of income which was filed within prescribed time, no penalty would be exigible in such cases. Further, on the addition of Rs.1,31,263/- which is made over and above the returned income, no penalty is leviable as the amount represents disallowance of certain expenses and no concealment is detected/proved by the AO.

Thus considering all the facts of the case, the submissions made by the AO and the rulings of various courts, there is no ground for levy of penalty and accordingly the penalty of Rs.62,11,054/- levied u/s 271(1)(c) of the Act is hereby directed to be deleted.”

4. Aggrieved against the appellate order, the Revenue is in appeal before us raising the following Grounds of Appeal:

[1] On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty u/s. 271(1)(c) of Rs. 62,11,050/- made on account of the disclosure made during the survey proceedings, without appreciating the facts that the disclosure was on account of the detection made during the course of survey proceedings, and mere disclosure of the same would not absolve the assessee from penalty u/s. 271(1)(c) of the Act.

[2] The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before the hearing of appeal.

5. Heard rival submissions and perused the materials available on record. It is undisputed fact that the Partner of the assessee Firm admitted undisclosed stock of Rs.1,69,25,900/- and undisclosed cash of Rs.31,74,600/- both totaling to Rs.2,01,00,500/-. The above unaccounted stock found during the course of survey on 12-10-2012 were duly recorded by the assessee firm in the books of accounts and Return of Income filed and also paid taxes thereon as business income. The above returned income was accepted by the assessing officer as business income while framing the regular assessment u/s. 143(3) on 28-01-2016, however disallowances were made on account of late payment of Provident Fund of Rs.31,950/-, subscription expenses of Rs.6,000/- and out of Car and petrol expenses of Rs.93,313/- and no addition is made out on account of 'business income'. However, the assessing officer initiated penalty proceedings and levied minimum penalty of Rs.62,11,054/- under section 271(1)(c) of the Act for concealment of income. The assessing officer did not dispute the disclosure made in the profit and loss account by the assessee Firm, notes to accounts and Annexure-F to Tax Audit Report. Further the Ld. A.O. accepted the above disclosures of income as 'business income' and

neither considered the same as undisclosed income under section 68 to 69D of the Act nor made any separate addition in this regard.

5.1. Once the particulars of income disclosed by the assessee and not disputed by the A.O., there cannot be question of any concealment of income by the assessee. It is settled principle of law that penalty cannot be levied on the basis of presumptions, surmises or conjectures. Section 271(1)(c) is a penal provision which require to be construed strictly, unless the conditions prescribed under the section is satisfied, penalty cannot be levied. The assessee Partnership Firm has admitted undisclosed unaccounted stock and cash as 'business income' at the time of survey as well as during the assessment proceedings. No material has been brought on record during the survey to disprove the assessee's contention regarding the source of business income which was out of business of gold and silver ornaments. Therefore the income has been credited into the profit and loss account and have never been considered as "other sources of income" which has been accepted by the assessing officer in the regular assessment proceedings.

6. Jurisdictional High Court in the case of PCIT Vs. Shree Sai Developers reported in 418 ITR 306 wherein held that a survey took place on 17/07/2012 wherein unaccounted income of Rs.78,50,000/- was declared during the survey of the assessee firm which was also subsequently included in the return of income filed by the assessee firm for the A.Y. 2012-13 The assessment was completed accepting the returned income thereon. The Hon'ble

Gujarat High Court held that since there was no concealment in the Return of Income filed by the assessee, which was ultimately accepted by the Revenue, there cannot be any levy of penalty u/s.271(1)(c) of the Act.

6.1. Other judicial precedents referred by the assessee are also supports the case of the assessee. Thus we do not find any infirmity in the order passed by the Ld. CIT(A) deleting the penalty levied u/s. 271(1)(c) of the Act. Thus the ground raised by the Revenue is devoid of merits and liable to be dismissed.

7. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 07-01-2026

Sd/-
(DR. BRR KUMAR) *True Copy*
VICE PRESIDENT
Ahmedabad : Dated 07/01/2026

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद