

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
" C " BENCH, AHMEDABAD  
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**And**

**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No. 406/AHD/2020**

**Asstt. Year:2005-2006**

Anisha R. Dhanani, 281, 28 <sup>th</sup> Floor, Kalpatru Heights, Dr. A.R. Nair Road, Agripada, Mumbai-400011.  <b>PAN: ACTPD3111C</b>	Vs.	A.C.I.T., Circle-1(1)(2) Vadodara.
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**And**

**ITA Nos. 407, 408 & 409/AHD/2020**

**Asstt. Years:2005-2006, 2006-07 & 2010-11)**

Raof R. Dhanani, 281, 28 <sup>th</sup> Floor, Kalpatru Heights, Dr. A.R. Nair Road, Agripada, Mumbai-400011.  <b>PAN: ACTPD1157A</b>	Vs.	A.C.I.T., Circle-1(1)(2) Vadodara.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri Sakar Sharma, A.R
Revenue by :	Shri V.K. Singh, Sr. D.R

**Date of Hearing** : **24/05/2022**  
**Date of Pronouncement:** **31/05/2022**

**ORDER**

**PER BENCH:**

The captioned appeals have been filed at the instance of different Assessee against the orders of the Learned Commissioner of Income Tax(Appeals)-1, Vadodara, arising in the matter of Penalty order passed under s. 271(1)(c) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Years 2005-2006, 2006-07 & 2010-11.

**First, we take up ITA No. 409/Ahd/2020, an appeal by the assessee Shri Raof R. Dhanani for AY 2010-11**

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

1. *Ld.CIT(A) erred on facts and in law in upholding penalty order passed by Assessing Officer without appreciating that penalty order passed by him was without jurisdiction and without satisfying the primary requirements of section 271(1)(c).*

2. *Ld.CIT(A) erred on facts and in law in upholding levy of penalty u/s.271(1)(c) in respect of amount received from appellant's sister amounting to Rs.40,000/- without appreciating that lender confirmed the appreciating that lender confirmed the transaction with PAN particulars.*

3. The only issue raised by the assessee is that the "Ld. CIT (A)" erred in confirming the penalty u/s 271(1)(c) of the Act for Rs. 12,360/- with respect to the additions made on account of unexplained cash credit under section 68 of the Act.

4. The facts in brief are that the assessee in the present case is an individual. A search was carried out u/s 132 of the Act in the Dhanani group of cases including the assessee dated 11-02-2011. Accordingly, a notice under 153A of the Act was issued and the assessee declared the income in the return filed under section 153A of the Act at Rs. 29,96,937/- only under the head salary, STCG and other sources. The assessment u/s 143(3) r.w.s. 153A was completed at Rs. 36,03,037/- after making an addition of Rs. 5,40,000/- on account of low household expenses, Rs.

40,000/- on account of unexplained loan and Rs. 26,099 on account of capital gain vide order dated 31/03/2013. On appeal learned CIT-A upheld the additions of Rs. 40000 on account of unexplained loan and addition on account of low household expenses to the extent of Rs. 1,40,000/- only.

5. The AO with respect to such additions i.e. low household expenses of Rs. 1,40,000/- and unexplained cash credit of Rs. 40,000/- initiated penalty proceedings u/s 271(1)(c) of the Act on account of concealment of income.

6. The assessee during the penalty proceedings submitted that he has not concealed or furnished any inaccurate particular of income. Similarly, the addition made by the AO which was partly confirmed by the "Ld. CIT (A)" on account of low house hold expenses was based on estimated basis. As far as the addition of Rs. 40,000/- is concern, it was submitted that the same was received from NRI sister namely Smt. Rafiqneesa Mercahat and her confirmation was also submitted but the same was not accepted on the reasoning that her credit worthiness was not properly explained. Accordingly, the assessee claimed that there cannot be any penalty proceeding u/s 271(1)(c) of the Act on account of such addition. However, the AO disagreed with the contention of the assessee and held that the assessee has furnished inaccurate particulars of income and thereby concealed his income to avoid the tax. Accordingly, the AO levied the penalty of Rs. 55,620/- being 100% of the tax amount sought to be evaded.

7. Aggrieved assessee preferred an appeal to the "Ld.CIT (A)" who deleted the penalty with respect to the addition made on account of low house hold expenses and confirmed the penalty with respect to other addition.

8. Being aggrieved by the order of the "Ld. CIT (A)" the assessee is in appeal before us.

9. The Ld. AR before us contended that the assessee has not furnished any inaccurate particulars of income and therefore, there cannot any penalty under section 271(1)(c) of the Act.

10. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

11. We have heard both the parties and perused the materials available on record. In the present case, the penalty has been levied with respect to the addition made on account of loan amount of Rs. 40,000/- which was treated as unexplained cash credit under section 68 of the Act. According to the AO, the assessee had furnished inaccurate particular of income and thereby concealed his income with respect to such unexplained loan amount. Thus the penalty was levied by the AO for Rs. 12,360/- being 100% of the amount of tax sought to be evaded on such addition of unexplained loan which was subsequently confirmed by the learned CIT (A).

11.1 Now the controversy before us arises so as to adjudicate whether the assessee has furnished inaccurate particulars of income with respect to the addition made on account of unexplained loan. The term inaccurate particular of income has not been defined under the provisions of section 271(1)(c) or elsewhere in the Act the Act. However, the meaning of the term inaccurate has been discussed by the Hon'ble Supreme Court in the case of **Reliance Petroproducts (P) Ltd reported in 189 taxman 322** wherein it was held that the term 'inaccurate' signifies deliberate act or omission on the part of the assessee. As such, the details/informations contained in the return of income /financial statements /audit report which are not correct according to truth, and were furnished by the assessee with the dishonest intent shall be treated as inaccurate particulars. The relevant extract from the judgment of Hon'ble Supreme Court in the case of **Reliance Petroproducts (P) Ltd (supra)** reads as under:

*We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as :—*

*"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript."*

*We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false*

11.2 Now, if we analyze the facts of the present case in the light of the above stated discussion, with respect to the penalty levied on account of loan amount of Rs. 40,000/- we note that the assessee has furnished necessary explanation and confirmation from the NRI sister but the same was rejected on the reasoning that the creditworthiness was not explained to the satisfaction of the authorities below. In this regard, we note that there was not furnished any inaccurate particular of income. It is for the reason that the details of the loan entry was duly furnished which was also supported by the confirmation. However, the confirmation filed by the assessee was not believed by the authorities below on the reasoning that the creditworthiness of the party was not justified based on the documentary evidence. Thus at the most such details can be regarded as inaccurate claim of the assessee which cannot be equated with the inaccurate particulars of income. Thus, we are not inclined to uphold the finding of the authorities below. Hence, we set aside the finding of the learned CIT-A and direct the AO to delete the penalty levied by him. Thus the ground of appeal of the assessee is allowed.

11.3 In the result the appeal filed by the assessee is allowed.

**Coming to ITA No. 408/Ahd/2020 an appeal by the assessee Shri Raooof R. Dhanani for A.Y. 2006-07.**

12. The assessee has raised following grounds of appeal:

1. *Ld.CIT(A) erred on facts and in law in upholding penalty order passed by Assessing Officer without appreciating that penalty order passed by him was without jurisdiction and without satisfying the primary requirements of section 271(1)(c).*

2. *Ld.CIT(A) erred on facts and in law in upholding levy of penalty u/s.271(1)(c) in respect of amount received from appellant's sister amounting to Rs.10,59,245/- without appreciating that no evidence of any bogus creditors was found in the course of search.*

13. The only issue raised by the assessee is that the "Ld.CIT (A)" erred in confirming the penalty u/s 271(1)(c) of the Act for Rs. 3,71,721/- on account of unexplained cash credit under section 68 of the Act.

14. The assessee declared the income in the return filed under section 153A of the Act at Rs. 9,22,739/- only under the head salary and other sources. The assessment u/s 143(3) r.w.s. 153A was completed at Rs. 22,81,980/- after making an addition of Rs. 3,00,000/- on account of low household expenses and Rs. 10,59,245/- on account of unexplained other creditor vide order dated 31/03/2013. The assessee filed appeal before learned CIT-A but during appellate proceeding withdrawn the grounds of appeal.

15. The AO with respect to such addition i.e. low household expenses of Rs. 3,00,000/- and explained cash credit of Rs. 10,59,245/- initiated penalty proceedings u/s 271(1)(c) of the Act on account of concealment of income.

16. The assessee during the penalty proceeding submitted that he has not concealed or furnished any inaccurate particular of income. Similarly, the addition made by the AO on account of low house hold expenses was based on estimated basis. As far as the addition of Rs. 10,59,245/- is concern, it was submitted that amount represents the sale proceeds on account of sale of car received on behalf of company namely M/s Liberty Phosphate Limited in which he was the MD. However due to change in management he was not able to get necessary detail from the company and hence he withdrew appeal filed before learned CITA-A in quantum proceeding. Further the addition of Rs. 10,59,245/- being other creditor balance was made on the basis of statement of affairs for year ending 31<sup>st</sup> March 2006 which is not equivalent to books of account. Therefore question of unexplained

cash credit in the books of account does not arise. Accordingly, the penalty proceeding for the above addition should be dropped.

17. However the AO disregarded the explanation furnished by the assessee and held that there was no withdrawal made by the Assessee for day to day household expenses. Thus, the sources for meeting such expenses was not explained by the AO. Similarly, any cash credit of the 10,59,245 was not explained based on documentary evidence even identity of the creditor was not established. The assessee failed to prove bona-fide explanation during assessment proceeding as well as during penalty proceeding. Accordingly, the AO held that the assessee has furnished inaccurate particular of income and thereby concealed his income to avoid the tax. Hence, the AO levied the penalty of Rs. 4,77,000/- being 100% of the tax amount sought to be evaded.

18. Aggrieved assessee preferred an appeal to the "Ld.CIT (A)" who deleted the penalty with respect to the addition made on account of low house hold expenses and confirmed the penalty with respect to other addition.

19. Being aggrieved by the order of the "Ld. CIT (A)" the assessee is in appeal before us.

20. The Ld. AR before us contended that the assessee has not furnished any inaccurate particulars of income and therefore, there cannot any penalty under section 271(1)(c) of the Act.

21. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

22. We have heard the rival contentions and perused the materials available on record. In the present the issue is with respect to the penalty levied on the addition of other creditor balances of Rs. 10,59,245/- which was treated as unexplained cash credit under section 68 of the Act in absence of documentary evidences. It is settled law that the penalty proceedings are distinct and independent from the assessment proceedings. Therefore, the addition made during the assessment proceedings does not authorize the AO ipso facto to levy the penalty under section 271(1)(c) of the Act. As such the AO is under the obligation to carry out the necessary verification before reaching to the conclusion that the assessee has furnished any inaccurate particular of income or concealed the income. In the instant case, the penalty was initiated on account of the addition made for unexplained cash credit under section 68 of the Act. The assessee explained that the amount of other creditor in his statement of affair represent amount received on behalf of company namely M/s Liberty Phosphate Ltd in which he was MD at that point of time. But due to sale of the company and change in management he was unable to procure necessary detail from the company. Thus, in quantum proceeding addition was made in absence of documentary evidences and accepted by the assessee. But the AO without verifying the genuineness of the transactions has levied the penalty merely on the ground that such cash credits were treated as unexplained during the quantum proceedings. As such the penalty proceedings being distinct and separate from the assessment proceedings, the AO is under the obligation to carry out the fresh verification as held by the Hon'ble Gujarat High Court in the case of National Textiles reported 249 ITR 125. The relevant extract of the judgment is extracted below:

*"In the instant case, the cash credits were not satisfactorily explained by evidence and documents. The parties who had advanced the alleged temporary loans were neither disclosed with their particulars nor any supporting documents were on record. Only two entries were explained. The accountant who had arranged the loan was not produced stating that he had left the service and relations with him were strained. On this state of accounts and evidence in the quantum proceedings, the department was justified in treating the cash credits as income of the assessee but merely on that basis by recourse to Explanation 1, penalty under section 271(1)(c) could not have been imposed without the department making any other effort to come to a conclusion that the cash credits could in no circumstances had been amounts received as temporary loans from various parties. The assessee in the quantum proceedings failed to produce the accountant but the department*

*also in penalty proceedings made no effort to summon him. Applying the test (ii) discussed above, therefore, it was a case where there was no circumstance to lead to a reasonable and positive inference that the assessee's case, that the cash credits were arranged as temporary loans, was false. The facts and circumstances were equally consistent with the hypothesis that it could have been sundry loans in small amounts obtained from different parties. Therefore, even taking recourse to Explanation 1, the circumstance or state of evidence on which the cash credits were treated as income, could not by themselves justify imposition of penalty without anything more on record produced by the assessee or the department.*

*It was, accordingly, held that the Tribunal was not justified in law in confirming the penalty levied under section 271(1)(c)."*

22.1 In view of the above, we hold that the AO cannot just levy the penalty merely on the ground that the additions were made during the quantum proceedings. As such the AO has to carry out necessary verification by issuing the notice to the parties before levying the penalty. But in the instant case, no such notice has been issued to the company as discussed above. In view of the above, we are of the view that no penalty can be levied under section 271(1)(c) of the Act for the reasons as stated above. Hence the ground of appeal of the assessee is allowed.

22.2 In the result the appeal filed by the assessee is allowed.

**Coming to ITA No. 407/Ahd/2020 an appeal by the assessee, shri Raof R. Dhanani for A.Y. 2005-06.**

23. The assessee has raised following grounds of appeal:

1. *Ld.CIT(A) erred on facts and in law in upholding penalty order passed by Assessing Officer without appreciating that penalty order passed by him was without satisfying the primary requirements of section 271(1)(c).*
2. *Ld.CIT(A) erred on facts and in law in upholding levy of penalty u/s.271(1)(c) in respect of cash deposited in bank accounts aggregating to Rs.9,00,000/-*

24. The only issue raised by the assessee is that the "Ld.CIT (A)" erred in confirming the penalty u/s 271(1)(c) of the Act for Rs. 3,02,940/- on account of unexplained credit.

25. The assessee declared the income in the return filed under section 153A of the Act Rs 13,97,625/- under the head salary, PGBP and other sources. The assessment u/s.143(3) r.w.s 153A was completed at Rs. 25,37,625/- after making an addition of Rs. 2,40,000/- on account of low household expenses and Rs. 9 Lakh on account of cash deposited vide order dated 31/03/2013. The assessee filed appeal before learned CIT-A who confirmed the addition on account of cash deposit of Rs. 9 Lakh whereas reduced the addition on account of low household expenses to the tune of Rs. 2.10 Lakh.

26. The AO with respect to such addition i.e. low household expenses of Rs. 2.10 Lakh and explained cash deposit of Rs. 9 Lakh initiated penalty proceedings u/s 271(1)(c) of the Act on account of concealment of income.

27. The assessee during the penalty proceeding submitted that he has not concealed or furnished any inaccurate particular of income. Similarly, the addition made by the AO on account of low house hold expenses was based on estimated basis. As far as the addition of Rs. 9 lakh being cash deposit it was submitted he was deriving income mainly from salary and other sources therefore he was not required to maintain books of account. However due to search carried out during F.Y. 2011-12, he prepared/ tried to prepare books of account based on memory and available information. As such he prepared cash book from 1<sup>st</sup> April 2005 to 31<sup>st</sup> March 2011 which was accepted by AO. But due to time gap he was unable to prepare books for the year under consideration i.e. for F.Y. 2004-05. However in the cash book for F.Y. 2005-06 he shown opening cash balance of Rs. 2,08,693/- which was accepted by the AO therefore considering the acceptance of opening and closing balances, the deposit of cash made during the year should have also been accepted. But in quantum proceeding addition was made and confirmed by the learned CIT-A and further no appeal was filed due to smallness of amount. However, the penalty proceeding are different from quantum proceeding, therefore considering the above explanation the penalty proceedings should be dropped.

28. However, the AO disregarded the explanation furnished by the assessee and held that there was no withdrawal made by the Assessee for day to day household expenses assessee and sources for meeting such expenses were also not explained by the AO. Similarly, the sources of cash deposit was not explained based on documentary evidence. The assessee failed to prove bona-fide explanation during assessment proceeding as well as during penalty proceeding. Accordingly the AO held that the assessee has furnished inaccurate particular of income and thereby concealed his income to avoid the tax. Hence, the AO levied the penalty of Rs. 3,74,000/- being 100% of the tax amount sought to be evaded.

29. Aggrieved assessee preferred an appeal to the "Ld.CIT (A)" who deleted the penalty with respect to the addition made on account of low house hold expenses and confirmed the penalty with respect to other addition.

30. Being aggrieved by the order of the "Ld. CIT (A)" the assessee is in appeal before us.

31. The Ld. AR before us contended that the assessee has not furnished any inaccurate particulars of income and therefore, there cannot any penalty under section 271(1)(c) of the Act.

32. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

33. We have heard the rival contentions and perused the materials available on record. At the outset, we note that the penalty levied by the AO with respect to the addition made on account cash deposit amounting to Rs.9 Lakh was confirmed by the Ld. CIT (A) in the absence of documentary evidences. It is settled law that the penalty proceedings are distinct from the assessment proceedings. Therefore the

addition made during the assessment proceedings does not authorize the AO ipso facto to levy the penalty under section 271(1)(c) of the Act. As such the AO is under the obligation to carry out the necessary verification before reaching to the conclusion that the assessee has furnished any inaccurate particular of income or concealed the income. In the instant case, the penalty was initiated on account of the addition made for the cash deposited in bank and sources of the same was not properly explained by the assessee. The assessee submitted that he was not maintaining regular books of account therefore due to considerable time gap he was not able to recollect the exact sources of credit.

33.1 However, we note that the amount of cash deposit in bank per se does not represent income of the assessee. As such the penalty proceedings being distinct and separate from the assessment proceedings, the AO is under the obligation to carry out the fresh verification as held by the Hon'ble Gujarat High Court in the case of National Textiles reported 249 ITR 125. The relevant extract of the judgment is extracted below:

*"In the instant case, the cash credits were not satisfactorily explained by evidence and documents. The parties who had advanced the alleged temporary loans were neither disclosed with their particulars nor any supporting documents were on record. Only two entries were explained. The accountant who had arranged the loan was not produced stating that he had left the service and relations with him were strained. On this state of accounts and evidence in the quantum proceedings, the department was justified in treating the cash credits as income of the assessee but merely on that basis by recourse to Explanation 1, penalty under section 271(1)(c) could not have been imposed without the department making any other effort to come to a conclusion that the cash credits could in no circumstances had been amounts received as temporary loans from various parties. The assessee in the quantum proceedings failed to produce the accountant but the department also in penalty proceedings made no effort to summon him. Applying the test (ii) discussed above, therefore, it was a case where there was no circumstance to lead to a reasonable and positive inference that the assessee's case, that the cash credits were arranged as temporary loans, was false. The facts and circumstances were equally consistent with the hypothesis that it could have been sundry loans in small amounts obtained from different parties. Therefore, even taking recourse to Explanation 1, the circumstance or state of evidence on which the cash credits were treated as income, could not by themselves justify imposition of penalty without anything more on record produced by the assessee or the department.*

*It was, accordingly, held that the Tribunal was not justified in law in confirming the penalty levied under section 271(1)(c)."*

33.2 In view of the above, we hold that the AO cannot just levy the penalty merely on the ground that the additions were made during the quantum proceedings. As such the AO has to carry out necessary verification to ascertain that such cash deposit was indeed income of the assessee which not offered to tax before levying the penalty. In view of the above, we are of the view that no penalty can be levied under section 271(1)(c) of the Act for the reasons as stated above. Hence the ground of appeal of the assessee is allowed.

33.3 In the result the appeal filed by the assessee is allowed.

**Coming to ITA No. 406/Ahd/2020 an appeal by the assessee Smt. Anisha R. Dhanani for A.Y. 2005-06.**

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

1. *Ld.CIT(A) erred on facts and in law in upholding penalty order passed by Assessing Officer without appreciating that penalty order passed by him was without jurisdiction and without satisfying the primary requirements of section 271(1)(c).*
2. *Ld.CIT(A) erred on facts and in law in upholding levy of penalty u/s.271(1)(c) in respect of gift of Rs.15,28,128/- received from her father in contemplation of death.*

35. The only issue raised by the assessee is that the "Ld. CIT (A)" erred in confirming the penalty u/s 271(1)(c) of the Act for Rs. 5,14,370/- and unexplained cash credit.

36. The assessee declared the income in the return filed under section 153A of the Act Rs. 1,54,610/- under the head PGBP and other sources. The assessment u/s.143(3) r.w.s 153A was completed at Rs. 26,12,740/- after making various additions including an addition of Rs. 15,28,128/- being gift received from relative treated unexplained cash credit. The assessee filed appeal before leaned CIT-A without any success.

37. The AO with respect to such addition i.e. unexplained cash credit of Rs. 15,28,128/- initiated penalty proceedings u/s 271(1)(c) of the Act on account of concealment of income.

38. The assessee during the penalty proceeding submitted that she has not concealed or furnished any inaccurate particular of income. As such amount of cash and jewelry was received on demise of her father which was disclosed in the return as gift not taxable. During the quantum proceeding she explained the sources and furnished necessary detail such as affidavit from her mother stating that the amount was received on the death of her father. But the AO and learned CIT-A treated the same as unexplained cash credit under section 68 on the reasoning that there was not sufficient capacity/creditworthiness of her father to justify the disbursement of such amount in cash and jewelry.

39. However the AO disregarded the explanation furnished by the assessee by observing as under:

3. *I have carefully considered the assessee's reply, but the same is not found tenable. At the time of assessment proceedings and the appellante proceedings the assessee has not furnished any evidence to show that the father of the appellant was capable of making huge amount of gift of Rs.13,51,000/- in cash and also diamond jewellery of Rs.1,77,128/- to the assessee. It is also held by Ld.CIT(A) in his order that the credit worthiness of the father of the appellant is a vital aspect of the case which is missing in the submission of AR of the appellant. Source of income of father of the appellant was also not explained. It is also not explained as to whether the donor was assessed to tax and he used to file his returns of income on regular basis. PAN of the father is also not furnished. Considering the facts and evidences produced before Ld CIT(A), it was held in the appeal order the genuineness of the gifts of above said amount cannot be established.*

4. *It is mandatory part of the assessee to primarily disclose all facts for arriving at its correct income of any previous year. It was held in the case of Sri Krishna Pvt. Ltd. Vs. ITO (1996) 221 ITR 538 (SC) that every disclosure is not and cannot be treated to be a true and full disclosure. what is required is a full and true disclosure of all material facts necessary for making assessment for that year. It was also decided in the case of KP Arthanariswamy Chettlar Vs. First ITO 84 ITR 61(Mad) and in the case of Sujir Ganesh Naik & Co. Vs. ITO (7 ITR 372) that disclosure must not only be full but also true. Hence the assessee contention in this case that it has not concealed or hidden any particular of income is not tenable.*

5. *Having regard to the above facts and circumstances of the case, I am satisfied that the assessee has furnished inaccurate particulars of income and thereby concealed her income only to evade the tax. I, therefore hold that this is a fit case for levying penalty u/s.271(1)(c) of the I.T Act. The quantum of penalty is worked out as under*

40. Aggrieved assessee preferred an appeal to the "Ld. CIT (A)" but no success.
41. Being aggrieved by the order of the "Ld. CIT (A)" the assessee is in appeal before us.
42. The Ld. AR before us contended that the assessee has not furnished any inaccurate particulars of income and therefore, there cannot any penalty under section 271(1)(c) of the Act.
43. On the other hand, the Ld. DR vehemently supported the order of the authorities below.
44. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that the AO levied the penalty with respect to addition amounting to Rs. 15,,28,128/- being gift/amount received on the demise of assessee's father which was treated as unexplained cash credit under section 68 of the Act in absence of documentary evidences to establish credit worthiness of her father. It is settled position of law that the penalty proceedings are distinct from the assessment proceedings. Therefore the addition made during the assessment proceedings does not authorize the AO ipso facto to levy the penalty under section 271(1)(c) of the Act. As such the AO is under the obligation to carry out the necessary verification before reaching to the conclusion that the assessee has furnished any inaccurate particulars of income or concealed the income. In the instant case, the penalty was initiated on account of the addition made for unexplained cash credit under section 68 of the Act. The assessee explained that the amount was received in form of cash and jewelry on the death of her father and disclosed the same in her return filed under section 139(1) of the Act as gift not subject to tax. During the quantum she has furnished affidavit from her mother in this regard. But the authorities below in quantum proceeding without confronting

her mother and without bringing any material contrary to affidavit sustained the addition holding that the creditworthiness of the father was not established. As per the assessee, the impugned issue was not perused for further litigation due to involvement of cost and to get the peace of mind. Thus, in quantum proceeding addition was made in absence of documentary evidences which was accepted by the assessee. As such the penalty proceedings being distinct and separate from the assessment proceedings, the AO is under the obligation to carry out the fresh verification as held by the Hon'ble Gujarat High Court in the case of National Textiles reported 249 ITR 125. The relevant extract of the judgment is extracted below:

*"In the instant case, the cash credits were not satisfactorily explained by evidence and documents. The parties who had advanced the alleged temporary loans were neither disclosed with their particulars nor any supporting documents were on record. Only two entries were explained. The accountant who had arranged the loan was not produced stating that he had left the service and relations with him were strained. On this state of accounts and evidence in the quantum proceedings, the department was justified in treating the cash credits as income of the assessee but merely on that basis by recourse to Explanation 1, penalty under section 271(1)(c) could not have been imposed without the department making any other effort to come to a conclusion that the cash credits could in no circumstances had been amounts received as temporary loans from various parties. The assessee in the quantum proceedings failed to produce the accountant but the department also in penalty proceedings made no effort to summon him. Applying the test (ii) discussed above, therefore, it was a case where there was no circumstance to lead to a reasonable and positive inference that the assessee's case, that the cash credits were arranged as temporary loans, was false. The facts and circumstances were equally consistent with the hypothesis that it could have been sundry loans in small amounts obtained from different parties. Therefore, even taking recourse to Explanation 1, the circumstance or state of evidence on which the cash credits were treated as income, could not by themselves justify imposition of penalty without anything more on record produced by the assessee or the department.*

*It was, accordingly, held that the Tribunal was not justified in law in confirming the penalty levied under section 271(1)(c)."*

44.1 In view of the above, we hold that the AO cannot just levy the penalty merely on the ground that the additions were made during the quantum proceedings and assessee did not pursue further appeal. As such the AO has to carry out necessary verification by issuing the notice to the assessee's mother to examine the veracity of the affidavit filed by her and bring cogent material which establishes that the amount of gift disclose by the assessee in return indeed represent her income subject to tax before levying the penalty. In view of the above, we are of the view

that no penalty can be levied under section 271(1)(c) of the Act for the reasons as stated above. Hence the ground of appeal of the assessee is allowed.

44.2 In the result the appeal filed by the assessee is allowed.

**45.** In the combined results, all the appeals of different assessee are **allowed**.

**Order pronounced in the Court on 31/05/2022 at Ahmedabad.**

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**  
31/05/2022