

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1290 of 2025

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Goberdhandhanri Infratech Private Limited having its office at Ranjan Construction, Garkha Road, Saran, Nehru Chowk, Chapra- 841301, Bihar through its authorized signatory namely Shashi Ranjan (Male), aged about 41 years, Son of Chandrama Singh, a resident of Nehru Chowk, Chapra, Police Station- Chapra, District- Saran.

... .. Petitioner

Versus

1. The Union of India through Secretary, Ministry of Finance, Income Tax Department, New Delhi.
2. The Principal Chief Commissioner of Income Tax (Bihar and Jharkhand), Patna.
3. The Principal Commissioner of Income Tax, PCIT, Patna-1.
4. The Assistant Commissioner of Income Tax, DC/AC Circle-1, Muzaffarpur.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Sanjeev Kumar, Advocate Mr. Pravashankar Mishra, Advocate
For the Respondents	:	Ms. Archana Sinha, Senior SC Ms. Richa Rajiv Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 17-06-2025

Heard Mr. Sanjeev Kumar, learned counsel for the petitioner and Ms. Archana Sinha, learned Senior Standing Counsel for the Department of Income Tax.

2. This writ application has been preferred seeking the following reliefs:-

“i) To issue a Writ in nature of Certiorari
for quashing of the followings:-

a) Order dated 15.09.2022 passed
under Section 271(1)(c) of Income Tax



Act whereby penalty of Rs.13,92,221/- for the assessment year 2015-16 has been imposed upon the petitioner company.

b) Demand Notice under Section 156 of Income Tax Act whereby demand of Rs.13,92,221/- for the assessment year 2015-16 has been determined to be payable to the petitioner company.

c) Order dated 19.03.2024 passed in Revision Case No. being PCIT, Patna-1/Revision-264/100000392035/23 whereby the order passed by the Assessing Officer has been affirmed and Revision petition has been dismissed.

ii) To issue a Writ in nature of Mandamus directing the respondents not to take any coercive action against the petitioner during pendency of this writ application.

iii) To any other relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case.”

Brief Facts of the Case

3. The petitioner is a private limited company registered under the provisions of the Companies Act, 1956. It is engaged in civil construction works. The case of the petitioner is that the company was continuously filing its Income Tax Returns (ITRs) since its incorporation. The present case arose on account of a bonafide mistake which took place due to inadvertence and human



error in not uploading its ITR for the assessment year 2015-16 even as the audited financial statement along with audit report had been duly furnished and all due taxes were paid in full.

4. The petitioner received a demand notice under Section 156 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') whereby a demand of Rs.13,92,221/- was raised against him for the assessment year 2015-16. A copy of the demand notice is Annexure 'P/6' to the writ application. The petitioner preferred a revision petition under Section 264 of the Act against the demand notice, before the Principal Commissioner of Income Tax-1, Patna. The revision petition, however, came to be dismissed vide impugned order dated 19.03.2024 on the following grounds:-

(i) The petitioner company did not file its return of income for assessment year 2015-16 voluntarily in spite of having taxable income.

(ii) Only after the issuance of notice under Section 148 of the Act, the petitioner company filed its return of income showing taxable income at Rs.45,05,567/-.

(iii) The petitioner company did not make compliance during penalty proceedings before Assessing Officer nor it submitted any reply during the revision proceedings. During the revision proceedings, online reply was furnished, but failed to explain as to how the penalty order passed by the Assessing Officer is prejudicial to the petitioner company, and



(iv) The impugned order has been passed taking recourse to Explanation '3' to Section 271 (1)(c) of the Act.

Submissions on behalf of the Petitioner

5. Mr. Sanjeev Kumar, learned counsel for the petitioner has assailed the impugned orders dated 15.09.2022 (Annexure 'P/5') passed by the Assessing Officer and 19.03.2024 (Annexure 'P/7') passed by the Revisional Authority on various grounds. One of the grounds taken by and on behalf of the petitioner is that the Assessing Officer has erred in levying penalty under Section 271 (1)(c) of the Act because it is not a case of concealment of income by the petitioner. The Assessing Officer could not appreciate that the petitioner company had already uploaded the audited financial statement together with tax audit report. It was a case of an inadvertent omission on the part of the petitioner company that it missed to upload the ITR.

6. It is submitted that the petitioner company filed its ITR under Section 148 immediately after the company got the opportunity. The returned income was exactly as per the financial statement uploaded along with the tax audit report. The assessment was completed on returned income and no addition was made as no concealment was ascertained. During the assessment proceedings, it was established that the petitioner company had



already discharged the tax liability during the financial year itself and there was a 'Nil' demand on assessment.

7. Learned counsel submits that the Assessing Officer has levied penalty in terms of Explanation 3 to Section 271 (1)(c), however, he failed to apply the provision of clause (c) of Explanation 4 to Section 271 (1)(c). It is submitted that this clause deals with quantification of tax sought to be evaded and resultant penalty where penalty is proposed to be levied in terms of Explanation 3 to Section 271 (1)(c). Even the calculation made by the Assessing Officer has been sought to be challenged on the ground that the Assessing Officer has not provided any credit for prepaid taxes as specified in clause (c) of Explanation 4 to Section 271 (1)(c). It is stated that had the credit been provided, there would have been no penalty. A comparative calculation has been shown in paragraph '16(iii)' of the writ application.

8. It is submitted that concealment of income and furnishing of incorrect particulars as occurring under Section 271 (1)(c) of the Act are the *sine qua non* for attracting a penalty under Section 271 (1)(c) of the Act. Since in this case, no concealment of particulars of income and no incorrect particulars of income have been furnished, the penal provision would not be attracted.



9. Lastly, it is submitted that each case has to be considered on its own facts and so far as the facts of the present case are concerned, it would be evident from the averments present in the counter affidavit of the respondent that they have admitted in paragraph '9' of their counter affidavit that "there was no concealment of income made by the assessee in terms of the provisions laid down in para (c) of Explanation 4 of section 271 of the I.T. Act." It is further stated in the counter affidavit that the Assessing Officer seems to have failed to consider the provision of clause (c) of Explanation 4 to Section 271 (1)(c) while imposing penalty under this Section.

10. Learned counsel submits that on the face of the admission on the part of the respondents that it is not a case of concealment of income, the imposition of penalty by invoking clause (c) of sub-section (1) of Section 271 and Explanation 4 of the Act is in the teeth of the statute and the same is liable to be struck out.

Stand of the Respondents

11. A counter affidavit has been filed on behalf of the respondents which is sworn by the Assistant Commissioner of Income Tax, Circle-1, Muzaffarpur who is the Assessing Officer.

12. Ms. Archana Sinha, learned Senior Standing Counsel for the Department has contested the writ application. In the



counter affidavit, a plea has been taken that the assessee filed its ITR only in response to the notice under Section 148 dated 31.03.2021 for the assessment year 2015-16 on 16.04.2021 showing income of Rs.45,05,567/-. It is admitted by the respondents that on perusal of the ITR, it was observed that there was prepaid taxes and the assessee had claimed TDS amounting to Rs.14,04,525/- which resulted into refund claim of Rs.12,304/-.

13. Learned Senior Standing Counsel, however, submits that this case would be falling under Section 271 (1)(c) of the Act and the Assessing Officer has rightly imposed a penalty of Rs. 13,92,221/- i.e. 100% of the tax sought to be evaded, under Section 271 (1)(c) of the Act. Drawing the attention of this Court towards the said provision of the Act, learned Senior Standing Counsel has submitted that because the petitioner did not file its ITR within the prescribed period, the non-filing of ITR alone is sufficient to attract Section 271 (1)(c) of the Act.

14. Reliance has also been placed on the judgment of the Hon'ble Allahabad High Court in case of **Addl. Commissioner of Income-tax v. Mewa Lal Sankatha Prasad** reported in (1979) 116 ITR 356 and on a judgment of the **Income Tax Tribunal, Visakhapatnam Bench in case of Meka Ranganayakamma v. Income Tax Officer** reported in [2024] 159 taxmann.com 1621 to



submit that where the assessee had failed to file return of income under Section 139 (1) and then filing the same only in response to notice under Section 148 would amount to concealment of income. The counter affidavit does not controvert the statements made in paragraph '16 (iii)' of the writ application.

Consideration

15. Having heard learned counsel for the parties and on perusal of the records, this Court finds that there are some admitted facts in the case. It is an admitted position that for the financial year 2015-16, the petitioner company had furnished audited financial statement and the tax audit report within the prescribed period under Section 44AB of the Act on 30.09.2015 vide acknowledgment. Admittedly, the petitioner company did not file the ITR which the company filed only after receipt of notice under Section 148 of the Act.

16. It is further an admitted position that the return filed by the petitioner under Section 148 of the Act was showing taxable income at Rs.45,05,567/- and the petitioner had discharged its liability on account of taxes in full within the due date. After the assessment of the ITR filed by the petitioner, no addition was made to its income, no additional tax was levied and the petitioner



was found entitled for refund of Rs.12,304/-. The refund was allowed.

17. In the above factual matrix of the present case, a question arises for consideration as to whether the impugned order dated 15.09.2022 as contained in Annexure ‘P/5’ is in accordance with law. For this purpose, this Court would first of all notice the order as contained in Annexure ‘P/5’ passed by the Assessing Officer. On perusal, it appears that the Assessing Officer claims to have served show cause notices upon the petitioner but the petitioner did not submit any response to those show cause notices. In these circumstances, it is stated that the Assessing Officer was left with no option but to pass the penalty order on the basis of the materials available on the record. In the concluding paragraph, the Assessing Officer has recorded as under:-

“In view of the discussions made above, the assessee is liable for penalty u/s 271(1)(c) of the Income Tax Act, 1961 which is calculated as under:-

A	Tax liability at returned income (NIL)	NIL (No ITR filed)
B	Tax liability at assessed income (Rs.51,00,811)	Rs. 13,92,221/-
C	Difference (B-A)	Rs.13,92,221/-
D	Tax sought to be evaded	Rs.13,92,221/-
	Minimum penalty imposable (100% of E)	Rs.13,92,221/-
	Maximum penalty imposable (300% of E)	Rs. 41,76,663/-

In view of the facts and circumstances of the case as discussed above, I impose a penalty of Rs.13,92,221/- i.e. 100% of the tax sought to be evaded u/s 271(1)(c) of the Income Tax Act, 1961.”



18. It is evident that the Assessing Officer is not taking into consideration the taxes already paid by the petitioner. The concluding paragraph gives an impression as if the petitioner evaded the payment of tax amounting to Rs.13,92,221/- which is not a correct position. The column 'D' in the tabular form gives a wrong impression.

19. It appears that when the petitioner company preferred revision before the Principal Commissioner of Income Tax-1, Patna, a plea was taken that it is not a case of concealment and the learned Assessing Officer had ignored the provision of clause (c) of Explanation '4' to Section 271 (1)(c) of the Act that deals with quantification of penalty where penalty is leviable under Explanation '3' to Section 271 (1)(c). As regards the order passed by the Revisional Authority, the petitioner has assailed the assertion on the revisional order that "no reply was received from the end of the assessee". The petitioner has asserted that the company through its Chartered Accountant had appeared physically or online on each and every date which can be verified from the records and the ordersheet as well as from the online portal of the Income Tax Department.

20. In paragraph '18' of the writ application, specific assertions have been made by the petitioner that the petitioner



company had applied for copy of the ordersheet but the same was not supplied till this date. Paragraph '18' of the writ application has not at all been denied by the respondents. In fact, the counter affidavit says in reply to paragraphs '16 (xiv)' to '25' of the writ petition that "...it requires no comments". This Court, therefore, finds that the assertion made in paragraph '18' of the writ application having not been denied, is required to be considered as being claimed by the petitioner.

21. At this stage, this Court deems it just and proper to reproduce the relevant part of paragraph '9' of the counter affidavit hereunder for a ready reference:-

"Hence, although the assessee had concealed the particulars of income in terms of Explanation 3 of section 271(1) (c) of the I.T. Act, but since there was no tax payable after giving the credit of TDS, there was no concealment of income made by the assessee in terms of the provisions laid down in para (c) of the Explanation 4 of section 271 of the I.T. Act. The Assessing Officer seems to have failed to consider the provision of clause (c) of explanation 4 to Section 271(1)(c) while imposing penalty under this section. This clause deals with quantification of tax sought to be evaded and resultant penalty where penalty is proposed to be levied in terms of



explanation 3 to Section 271(1)(c). The said provision reads as under:-

“Where in any case to which explanation 3 applies the amount of tax sought to be evaded shall be the tax on total income assessed as reduced by the amount of advance tax, tax deducted at source, tax collected at source and self-assessment tax paid before the issue of notice under Section 148.””

22. Thus, a bare reading of paragraph ‘9’ of the counter affidavit makes the position in law clear. It is their own stand that the Assessing Officer seems to have failed to consider the provision laying down the manner in which quantification is to be done. In this case, there is no ‘evasion’ of tax. It is crystal clear that even the respondents have in so many words admitted that since there were no tax payable after giving the credit of TDS, there was no concealment of income made by the assessee in terms of the provision laid down in clause (c) of the Explanation ‘4’ of Section 271 of the Act.

23. Section 271 (1)(c) of the Act and its Explanation ‘3’ are quoted hereunder:-

“**271 (1)(c)** has concealed the particulars of his income or ⁴[* * *] furnished inaccurate particulars of ²[such

4. Omitted by Act 5 of 1964, S.40 (w.r.e.f. 1-4-1964).

2. [Substituted by Act 18 of 2005, S.58, for certain words (w.e.f. 1-4-2006).]



income, or]

³[Explanation 3. -Where any person ⁴[* * *] fails, without reasonable cause, to furnish within the period specified in sub-section (1) of section 153 a return of his income which he is required to furnish under section 139 in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause (i) of sub-section (1) of section 142 or section 148 and the Assessing Officer or the ⁵[* * *] Commissioner (Appeals) is satisfied that in respect of such assessment year such person has taxable income, then, such person shall, for the purposes of clause (c) of this sub-section, be deemed to have concealed the particulars of his income in respect of such assessment year, notwithstanding that such person furnishes a return of his income at any time after the expiry of the period aforesaid in pursuance of a notice under section 148.”

24. The present case is standing on a completely different footing. The bonafide and inadvertent human error is apparent on the face of it in as much as financial statements and tax audit report were duly filed and all taxes stood paid within the presented period but the ‘ITR’ could not be filed/uploaded. Explanation ‘3’ does not envisage this situation.

3. Substituted by Act 3 of 1989, S.50, for *Explanation 3* (w.e.f. 1-4-1989).

4. Certain words omitted by Act 20 of 2002, S.101 (w.e.f 1-4-2003).

5. Certain words omitted by Act 21 of 1998, S.65 (w.e.f 1-10-1998).



25. Explanation '4' provides the method of calculation with reference to clause (iii) of this sub-section. Clause (c) to Explanation '4' is required to be taken note of in the present case because the penalty has been imposed by the Assessing Officer taking recourse to this provision. It reads as under:-

“(c) where in any case to which Explanation 3 applies, the amount of tax sought to be evaded shall be the tax on the total income assessed as reduced by the amount of advance tax, tax deducted at source, tax collected at source and self-assessment tax paid before the issue of notice under section 148.”

26. Keeping in view clause (c) of Explanation '4' of Section 271 (1)(c) of the Act, this Court finds that the statements made by the petitioner in paragraph '16(iii)' of the writ petition wherein calculations have been shown have not been denied and that would be important to take a view that the Assessing Officer has not applied his judicious mind even while calculating the penalty amount.

27. This Court finds on appreciation of the scheme of Section 271 (1)(c) read with Explanation '3' that it essentially covers a case where there is a concealment of the particulars of



income or where the assessee has furnished incorrect particulars of his income.

28. This Court has no difficulty in recording that it is not a case of concealment of particulars of income or furnishing of incorrect particulars of income. Even the respondents have admitted it in paragraph '9' of their counter affidavit which this Court has already quoted hereinabove. Explanation '3' clearly talks of a satisfaction to be reached by the Assessing Officer or the Joint Commission (Appeals) or the Commissioner (Appeals) that in respect of such assessment year, such person has taxable income and if he has not filed his return, then he will be deemed to have concealed his particulars of income in respect of such assessment year. In the present case, no such satisfaction has been recorded by the Assessing Officer in the peculiar facts of this case where admittedly, the petitioner had uploaded the financial statements and the tax audit report and had paid all the taxes.

29. According to this Court, the provisions of law as discussed above have been incorporated in the statute book to catch hold of a dishonest person who fails to file his return and conceals his particulars of income in order to evade taxes. In the present case, the facts are glaring and showing on the face of it



with an admission on the part of the respondents that it was not a case of concealment of income by the assessee. In fact, the petitioner has been found entitled to refund.

30. So far as the two judgments cited by Ms. Archana Sinha, learned Senior Standing Counsel for the Department are concerned, in the considered opinion of this Court, those are not at all applicable in the facts of the present case. In the case of **Mewa Lal Sankatha Prasad** (supra), the Hon'ble Allahabad High Court was answering two questions which were referred by the Tribunal for the opinion of the High Court. Those two questions were as under:-

“1. Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that for the purposes of calculating penalty under s. 271(1)(c), the provisions of s. 271(1)(c) as amended by the Finance Act, 1968, with effect from April 1, 1968, were not applicable and that the penalty has to be calculated according to the provisions of the Act which was applicable as per the provisions in force prior to April 1, 1968?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in



reducing the amount of penalty imposed under s. 271(1)(c) from Rs. 18,000 to minimum imposable with reference to the tax sought to be evaded?”

31. In course of argument, learned Senior Standing Counsel for the Department has ultimately submitted that those two questions are not involved in the present writ application.

32. So far as the judgment of the Tribunal in case of **Meka Ranganayakamma** (supra) is concerned, again in the said case, the assessee who had sold a piece of land had not filed return and it was found that he had concealed his particulars of income. The present case stands on a completely different footing and the judicial pronouncements placed before this Court on behalf of the Department would not help it.

33. For the reasons stated hereinabove, we are of the considered opinion that the Assessing Officer as well as the Revisional Authority both have failed to take a correct view in the facts and circumstances of this case. The Assessing Officer has not only committed error in applying clause (c) of sub-section (1) of Section 271 read with Explanation ‘3’ of the Act but has also failed to calculate the penalty amount by duly



appreciating clause (c) attached to Explanation ‘4’. Thus, on both counts, he has committed wrong.

34. In ultimate analysis, the impugned orders cannot sustain the test of law. Those are liable to be set aside.

35. Accordingly, this Court sets aside the impugned orders and allow this writ application.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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