

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRIPAWAN SINGH, JUDICIAL MEMBER AND
SHRIBRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.2612/Del/2018

निर्धारणवर्ष/Assessment Year:2010-11

CANE DEVELOPMENT COUNCIL ROHANA KALAN, C/o Dinesh Mohan, Advocate, 2-Anand Vihar, Lane No.1, Circular Road, Muzaffarnagar, Uttar Pradesh. PAN No.AAALC0277F	बनाम Vs.	INCOME TAX OFFICER, Ward 1(2), Muzaffarnagar, Uttar Pradesh.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A No.2613/Del/2018

निर्धारणवर्ष/Assessment Year:2011-12

CANE DEVELOPMENT COUNCIL ROHANA KALAN, C/o Dinesh Mohan, Advocate, 2-Anand Vihar, Lane No.1, Circular Road, Muzaffarnagar, Uttar Pradesh. PAN No.AAALC0277F	बनाम Vs.	INCOME TAX OFFICER, Ward 1(2), Muzaffarnagar, Uttar Pradesh.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A No.2614/Del/2018

निर्धारणवर्ष/Assessment Year:2010-11

CANE DEVELOPMENT COUNCIL TITAWI, C/o Dinesh Mohan, Advocate, 2-Anand Vihar, Lane No.1, Circular Road, Muzaffarnagar, Uttar Pradesh. PAN No.AAACL0173E	बनाम Vs.	INCOME TAX OFFICER, Ward 1(2), Muzaffarnagar, Uttar Pradesh.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A No.2615/Del/2018

निर्धारणवर्ष/Assessment Year:2011-12

CANE DEVELOPMENT COUNCIL TITAWI, C/o Dinesh Mohan, Advocate,	बनाम Vs.	INCOME TAX OFFICER, Ward 1(2), Muzaffarnagar,
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2-Anand Vihar, Lane No.1, Circular Road, Muzaffarnagar, Uttar Pradesh. PAN No.AAALC0173E		Uttar Pradesh.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri Ankit Gupta, Advocate
Revenue by	Ms. Harpreet Kaur Hansra, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	27.11.2025
उद्घोषणाकीतारीख/Pronouncement on	28.11.2025

आदेश / O R D E R

PER BENCH:

1. These four appeals by two different assesses are directed against the separate orders of Id. CIT(A), Muzaffarnagar for assessment years 2010-11 & 2011-12 in confirming the penalty levied under section 271(1)(c) of the Act. Facts in all these appeals are almost similar except variation of figure of penalty, thus, with the consent of parties, all the appeals were clubbed, heard together and are decided by common order to avoid the conflicting decision. For appreciation of facts, facts in appeal in ITA No.2613/Delhi/2018 for AY 2011-12 are treated as lead case. The assessee in ITA No.2613/Delhi/2018 has raised the following grounds of appeal:

- 1. "That the notice issued u/s 271(1)(c) and other imposing penalty of Rs.10,30,000.00 under said section are illegal, bad in law, and without jurisdiction.*
- 2. That in view of the facts and circumstances of the case the CIT(A) has erred in law and on facts in upholding the penalty of Rs.10,30,000.00 imposed u/s 271(1)(c).*
- 3. That in view of the facts and circumstances of the case the CIT(A) has erred in law and on facts in not providing the proper opportunity of hearing, which is bad in law and against the principle of natural justice.*

- 4. That the CIT(A) has failed to appreciate that the mere disallowances of claim/expenses claimed do not attract penalty u/s 271(1)(c) and the same has been wrongly upheld.*
- 5. That the AO/CIT(A), in view of the facts and circumstances, has erred in making the addition/disallowance of Rs.29,42,866.00 on account of Surplus, Rs.1,69,986.00 on account of Santage Charges and Rs.2,17,284.00 on account of difference in Masfault/Imulsation, which cannot be treated as concealment of income or furnishing of inaccurate particulars as per the provision of section 271(1)(c).*
- 6. That the information filed and the material available on record are not properly considered and as such the order imposing penalty u/s 271(1)(c) is illegal and bad in law.*
- 7. That the appellant had neither concealed particulars of income nor had not filed inaccurate particulars of income and the CIT(A) has failed to appreciate that the additions are made on disallowance of expenses/claims.*
- 8. The addition/disallowance has been made merely on the basis of rejection of explanation of the appellant and no material has been brought on record by the AO in support of said addition/disallowance hence no penalty u/s 271(1)(c) could be levied on the basis of such a disallowance.*
- 9. That the CIT(A) has erred in law and on facts in non-quashing of penalty proceedings u/s 271(1)(c) which is wrongly initiated by the AO.*
- 10. Penalty proceedings have been initiated without any specific charges hence the same are liable to be set aside.*
- 11. That in any case the penalty imposed is unjust, arbitrary and highly excessive."*
2. Brief facts of the case are that assessee is a Co-operative society engaged in the business of providing of Credit Facility and Agricultural Implements to farmers and marketing of agricultural produce grown by its members. The assessee filed its return of income declaring nill income. The assessment was completed on 28.02.2014. The Assessing Officer (AO) while passing the

assessment order made two additions; first addition of santage of Rs.1,69,986/- and second addition of Rs.29,42,866/ of surplus. The AO also initiated penalty under section 271(1)(c). The AO levied penalty @100% of tax sought to be evaded on both the additions vide his order dated 30.03.2015. On appeal before Ld. CIT(A), the penalty levied u/s 271(1)(c) of the Act was upheld. Further aggrieved the assessee has filed present appeal before Tribunal.

3. We have heard the Ld. Authorized Representative (AR) of the assessee and the learned Senior departmental representative (Ld. Sr. DR) for the Revenue. The Ld. AR of the assessee submits that assessee was established by an order passed by Cane Commissioner State of Uttar Pradesh under section 5 of U.P. Sugar Cane (Regulation of Supply & Purchase) at 1953, read with Rule of Sugar Cane Act. The assessee was established on the ground that it does not enjoy exemption under section 12AA of Income Tax Act. The assessee is working on mutuality. There is no profit motive. The assessee has to spend all the commissions or received from different sugar Mills or aid received from State Government. The returns are filed to claim refund of TDS deducted by various sugar Mills. The commissions are received as per norms of State Government. The Ld AR of the assessee submitted that assessee has neither concealed the particulars of income nor furnished inaccurate particulars while filing return of income. The assessee made full disclosure of all the receipt in its return of income and the additions were made only due to difference of opinion. Mere disallowance would not *ipso facto* lead to levy of penalty as has been held by Hon'ble Apex Court in

Reliance Petro Products vs. CIT (322 ITR 158). The Id AR of the assessee on addition of surplus money submits that similar receipt has been allowed in assessment completed under section 143(3) in AY 2017-18 and 2018-19 by following the order of order of Allahabad High Court in CIT Vs N.S. Committee in ITA No. 759 of 2012, copy of which is placed on record. The Id AR of the assessee also relied on the decision of Delhi High Court in CIT Vs Amit Jain 351 ITR 74 (Delhi). The Id AR of the assessee fairly submits that the appeal in quantum assessment is still pending adjudication before tribunal and these appeal can be adjudicated independently.

4. On the other hand, the Ld. Sr. DR for the Revenue supported the orders of the lower authorities.
5. We have considered the rival submission of both the parties and have gone through the orders of lower authorities carefully. We find that there is no much dispute on the facts. It is a matter of fact that the AO completed assessment on the basis of details available in the return of income. There is no specific finding of AO that the assessee concealed any particulars of income, in the return of income furnished. The additions were made by AO on the basis of treating the receipts in a different manner. We find that Allahabad High Court in assesses own case in AY 2006-07 in ITA No.759 of 2012 while considering the question of law that money advance (surplus) by the State Government to the assessee – Cane Cooperative Society were in the nature of grant in aid for construction of road and the sum which was given by State Government and the funding given by the State Government used for that very purpose and held that the provision of section 2(24)

would not cover such grant in aid for treating as income. On appreciation of facts in hand, we find that mere disallowance of claim made in the return of income which was not accepted by the AO, will not *ipso facto* can be treated as concealed income, unless there is finding that particulars furnished by assessee is incorrect or erroneous or false. The Hon'ble Supreme Court in CIT Vs. Reliance Petro Products Pvt. Ltd. (322 ITR 158) (SC) also held that mere making a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of assessee. Such claim made in the return cannot amount to inaccurate particulars. In our considered view, the ratio of decision in Reliance Petro Products Pvt. Ltd. (supra) is squarely applicable. Thus, we do not find any justification in levy of penalty. The penalty levied by AO is deleted. In the result, the grounds of appeal raised by assessee are allowed.

6. In the result, appeal of the Assessee in ITA No.2612/Del/2018 is allowed.
7. Considering the fact that in all remaining three appeals i.e. in ITA Nos. 2613 to 2615/Del/2018 are allowed with similar observations.
8. In the result, all the appeals of both the assesses are allowed.

Order pronounced in the open court on 28.11.2025

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Dated: 28.11.2025

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI