



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4807 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
		✓

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SWAPN DEVELOPERS

Versus

NATIONAL FACELESS APPEAL CENTRE(NFAC) & ANR.

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Appearance:

MR SUDHIR M MEHTA(2058) for the Petitioner(s) No. 1

MS SHAILEE S MEHTA(5873) for the Petitioner(s) No. 1

KARAN G SANGHANI(7945) for the Respondent(s) No. 1,2

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

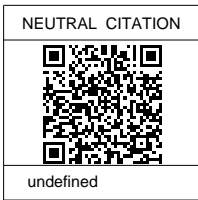
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 26/08/2025

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr. Sudhir Mehta for the petitioner and learned Senior Standing Counsel Mr. Karan Sanghani



for the respondent.

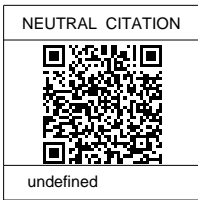
2. Having regard to the controversy involved, with the consent of learned advocates for the respective parties, the matter is taken up for hearing.

3. Rule returnable forthwith. Learned Senior Standing Counsel Mr. Karan Sanghani waives service of notice of rule on behalf of the respondent.

4. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

"A. Be pleased to admit and allow this petition.

B. Be pleased to issue writ of mandamus or writ of certiorari or any other appropriate writ, order or direction to quash and set aside the impugned order dated 21.11.2024 under section 271(1)(c) of the Act at Annexure "K".



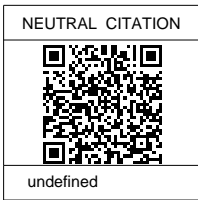
C. Pending admission, hearing and final disposal of the present petition, this Hon'ble Court be pleased to stay operations and recovery of penalty of Rs. 26,90,780/- and implementation of the impugned order dated 21.11.2024 passes u/s 271 (1) (c) of the Act at Annexure "K".

D. Be pleased to grant any other and further relief which may be deemed fit and proper in the interest of justice.

E. Be please to direct to respondents to an award of costs to the petition to the petitioner."

5. Brief facts of the case are that the petitioner is a partnership firm engaged in the business of builder and property developer.

6. The petitioner filed its return of income on 30.09.2013 for the Assessment Year 2013-2014 declaring loss of Rs.

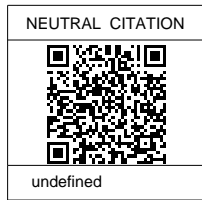


34,36,500/- .

7. The Assessing Officer passed the assessment order under section 143(3) of the Income Tax Act, 1961 (For short "the Act") dated 18.03.2016 determining the income of the petitioner at Rs. 64,02,990/- .

8. Respondent no.2 thereafter issued a notice of demand under section 156 of the Act making the petitioner liable to pay a sum of Rs.26,90,780/- for the Assessment Year 2013-2014 and a show cause notice under section 274 read with section 271 of the Act dated 18.03.2016 was issued pending initiation of proceedings for penalty.

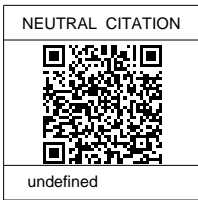
9. Being aggrieved by the assessment order, the petitioner preferred an appeal



manually under section 246A of the Act by filing Form No.35.

10. It is the case of the petitioner that the said appeal under section 246A was transferred to the NFAC who passed an order under section 250 of the Act dated 16.02.2023 confirming the penalty under section 271(1((c) of the Act on incorrect facts instead of adjudication in appeal under section 246A against the assessment order under section 143(3) of the Act.

11. It is the case of the petitioner that since the appeal preferred by the petitioner challenged the assessment order under section 143(3) of the Act and not the penalty order under section 271(1)(c) of the Act, the petitioner preferred a rectification application under section

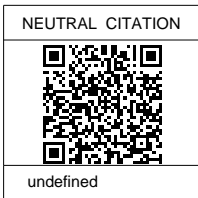


154 of the Act.

12. Respondent no.1 passed the order under section 154 of the Act dated 16.10.2023 to amend the order dated 16.02.2023.

13. It is the case of the petitioner that respondent no.1 passed an order under section 154 read with section 250 of the Act dated 11.07.2024 to amend the order dated 16.02.2023 whereby the corrected order under section 250 of the Act along with the corrected dismissal order dated 16.10.2023 adjudicating assessment order under section 143(3) of the Act were uploaded, however, the correct order against the appeal was only made available after 17 months i.e. on 11.07.2024.

14. Aggrieved by the appellate order under section 250 of the Act and assessment



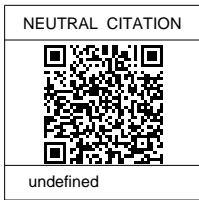
order under section 143(3) of the Act, the petitioner preferred an appeal before Income Tax Appellate Tribunal, Surat by filing Form 36.

15. The respondent no.1 thereafter passed a penalty order under section 271(1)(c) of the Act dated 26.07.2004 imposing total penalty of Rs. 30,40,401/-.

16. The petitioner preferred an appeal before the CIT (Appeals) against the said penalty order.

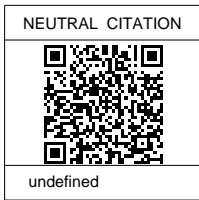
17. Respondent no.1 thereafter passed the impugned rectification order under section 154 of the Act on 21.11.2024 dismissing the appeal and confirming the penalty under section 271(1)(c) of the Act.

18. Being aggrieved, the petitioner has



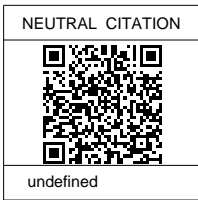
preferred the present petition.

19. Learned advocate Mr. Sudhir Mehta for the petitioner submitted that the impugned order is passed without considering the fact that the rectification order was already passed under section 154 of the Act and the petitioner being aggrieved by such rectification order, has already preferred an appeal before the Tribunal. It was further submitted that the impugned order dated 21.11.2024 is also not tenable in the eye of law in view of the fact that the order which is sought to be rectified already stands rectified by the appellate authority. It was also submitted that the penalty order dated 26.07.2024 was passed prior to passing of the order and was under challenge and therefore, there was no question of restoring such penalty



order by impugned rectification order.

20. It was further submitted that respondent no.1 National Faceless Assessment Centre (NFAC) had passed an order dated 16.02.2023 under section 271(1)(c) of the Act imposing penalty for cash deposit of Rs.56,64,000/-, however by rectification order dated 16.10.2023, the appellate authority of NFAC has rectified the mistake of wrongly uploading the order of different assessee on different subject matter and therefore, the complete order was served only on 11.07.2024 and accordingly, the order dated 21.11.2024 passed by NFAC against the assessment order was in pursuance of the wrong order dated 16.02.2023 for levy of penalty which had nothing to do with the assessee. It was therefore, submitted that the impugned

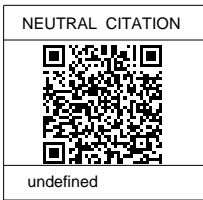


order passed by NFAC rectifying the wrong order is of no consequence so far as the petitioner is concerned.

21. Per contra, learned Senior Standing Counsel Mr. Karan Sanghani could not controvert the facts emerging from the record to the effect that the impugned rectification order dated 21.11.2024 is an order rectifying the wrong order and therefore, such order cannot be sustained.

22. Having heard the learned advocates for the respective parties and in view of the submissions recorded here-in-above, insofar as facts of the case are concerned it can be said *res ipsa loquitur*.

23. In view of the above, when facts are not in dispute as narrated here-in-above, it is apparent that the impugned



order dated 21.11.2024 passed under section 271(1)(c) of the Act is liable to be quashed and set aside and is accordingly quashed and set aside.

24. Petition stands disposed of. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI, J)

RAGHUNATH R NAIR