

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.4823/Del/2024, A.Y. 2017-18

PARVEEN VPO Khanda Tehsil Hansi, Distt. Hisar, Haryana, PIN: 125038, PAN: CUZPP6932K	Vs.	Income Tax Officer, Ward-1, Aayakar Bhawan, Sector 14, Hisar (Haryana)
(Appellant)		(Respondent)

Appellant by	Sh. Premraj Pal, Advocate
Respondent by	Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing	17/02/2025
Date of Pronouncement	17/02/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal for the Assessment Year (hereinafter, the 'AY') 2017-18 filed by the assessee is directed against the order dated 21.08.2024 passed by the Commissioner of Income Tax (Appeals), NFAC, Delhi [hereinafter, the 'CIT(A)'].

2. Following grounds have been raised in this appeal:

1. "Ld. CIT(A) erred in upholding the validity of penalty order dated 27-03-24, u/s 271AAC(1) of the Act, which is without jurisdiction;

2. Ld. CIT(A) erred in confirming the penalty order u/s 271AAC(1) of the Act passed by Ld. Assessment Unit, Income Tax Department on 27-03-24 amounting to Rs. 37,920/-.

3. Ld. CIT(A) erred in confirming the penalty order u/s 271AAC(1) of the Act, passed by Ld. Assessment Unit, Income Tax Department, without affording proper opportunity and without service of notice issued by Ld. CIT(A). Ld. CIT(A) had sent notice u/s 250 on e-mail ID RTSBRW64@GMAIL.COM, but as per Form-35 my e-mail ID is parveenkhanda97@gmail.com.

4. Ld. CIT(A) erred in confirming the penalty order u/s 271AAC(1) of the Act, passed by Ld. Assessment Unit, Income Tax Department, without service of penalty notices.”

3. The relevant facts giving rise to this appeal are that the case of the assessee, a non-filer, was reopened on the basis of the information that the assessee had made cash deposit of Rs.6,32,000/- during the relevant year including the demonetization period. Consequential assessment was completed, wherein the said cash deposits aggregating to Rs.6,32,000/- deposited in bank was treated as unexplained and taxed under section 115BBE of the Income Tax Act, 1961 (hereinafter, the ‘Act’). Aggrieved, the assessee filed appeal before the CIT(A), who dismissed the quantum appeal. After the dismissal of the quantum appeal by the Ld. CIT(A), the AO levied the penalty of Rs. 37,920/- under section 271AAC (1) of the Act. The said penalty was also upheld by the Ld. CIT(A). This appeal is against

the order of the Ld. CIT(A) upholding the said penalty levied under section 271AAC (1) of the Act.

3.1 The assessee challenged the quantum addition Rs.6,32,000/- upheld by the Ld. CIT(A) before the Tribunal. The SMC Bench, New Delhi, in the ITA No. 4745/Del/2024 (order dated 07.01.2025), allowed the relief of Rs.5,32,000/- out of total addition of Rs. 6,32,000/-. Further, the ITAT, in view of the finding of the Hon'ble Madras High Court in the case of SMILE Microfinance Limited vs. ACIT, writ petition (MD) No. 2078 of 2020 and 1742 of 2020 (order dated 19.11.2024), has also held that the income of Rs.1.00 Lakh upheld in the hands of the appellant assessee is not assessable under section 115BBE of the Act.

4. In view of the finding of the Tribunal, in the assessee's own case in the ITA No.4745/Del/2024, the Ld. Authorized Representative (hereinafter, the 'AR') contended that the penalty under section 271AAC(1) of the Act was not leviable after the Tribunal's order as there was no income assessable under section 115BBE of the Act. Our attention was drawn to the provisions of the section 271AAC(1) of the Act providing computation of the penalty @ 10% of the tax payable under clause (i) of sub section (1) of section of 115BBE of the Act.

5. On the other hand, the Ld. Senior Departmental Representative (hereinafter, the 'Sr.DR') placed reliance on the orders of the lower authorities.

6. We have heard both the parties and have perused the material available on the record. We find merit in the arguments of the Ld. AR. We therefore, are of the considered view that the penalty in this case, after the finding of the coordinate SMC Bench in quantum appeal, is not leviable at all as there is no assessable income under section 115BBE of the Act. Accordingly, the penalty is quashed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in open Court on 17 February, 2025.

Sd/-

**(VIKAS AWASTHY)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated: 18/02/2025

Binita, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI