

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH : COCHIN**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

<b>S.A. No. 215/Coch/2024 (Arising out of ITA No. 611/Coch/2024) &amp; ITA No. 611/Coch/2024 Assessment Year : 2016-17</b>
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M/s. Palloottigiri Society, Society of the Catholic Apostolates, Monvila, Pallottigiri, Kerala – 695 016. <b>PAN: AAATP2861J</b>	<b>Vs.</b>	The Income Tax Officer, Exemption Ward, Trivandrum.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri P.V. Chacko, CA
Revenue by	:	Smt. Leena Lal, Snr. AR

Date of Hearing	:	01-01-2025
Date of Pronouncement	:	27-02-2025

**ORDER**

**PER SOUNDARARAJAN K., JUDICIAL MEMBER**

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 29/04/2024 in respect of the A.Y. 2016-17 and raised the following grounds:

**GROUND OF APPEAL**

1. Sec. 271(1)(c) :- The first Appellate Authority miserably failed in Explanation (4) appreciating our plea that the penalty that can be charged is only Zero because of explanation 4 in Section 271(1)(c).

	<b>A</b>	<b>B</b>
	<b>Amount of tax assessed on the total Income</b>	<b>Amount of tax on total income reduced by the concealed amount</b>
Income as per Rectification Order including concealed income Rs.33,55,131 and Rs. <u>9,67,384</u> 43,22,515	1,93,84,638	
Income excluding the same		1,50,62,123
Application admitted as per Rectification Order	<u>2,30,40,660</u>	<u>2,30,40,660</u>
<b>Excess of Application</b>	<b><u>36,56,022</u></b>	<b><u>79,78,537</u></b>
Hence Tax	<b>NIL</b>	<b>NIL</b>

2. Sec. 271(1)(c) :- One amount subjected to penalty is Rs.33,55,131/- which was originally claimed as Corpus donation, but later during the course of assessment, itself the assessee had admitted the same to be added to income for want of clarity regarding corpus nature in the letter, and so it is not a concealment or furnishing of inaccurate particulars.
3. Sec. 271(1)(c) The other sum subjected to penalty is Rs.9,67,384/- which is properly accounted as sale proceeds of a vehicle but which was over looked to be treated as income. The mistake was admitted during the assessment stage itself and hence again, it is not a concealment.

4. Sec. 271(1)c

Explain 1. The penalty assessing authority, intentionally omits the spirit of “explanations 1” given in the section. It states that if the assessee fails to give proper explanation to the assessing authority, only then it will tantamount to concealment or submission of false statement.

Receipts and Payments account Income & Expenditure A/c and Balance Sheet were also gone through by the assessing authority and found that, the sale of vehicle is properly shown in the books and also the donation was accounted.

No.5

Though in 6<sup>th</sup> page of the Penalty Order, the authority states that “Therefore the addition of Rs.33,55,131/-, and Rs.9,67,384/- were confirmed in the order of the LdCIT(A). It is nothing but false, as these issues were not brought to his attention and no comment was made by him as above.

No.6

The assessing authority, who had on the basis of CIT(A)’s order issued the Rectification Order with NIL demand had given no authority to anyone to issue any penalty notice under any section. Once the Rectification Order is issued the original order is subjected to a silent death and becomes only part of history. So, the present authority has absolutely, no authority to issue the Penalty Order, because the Assessing authority who have made the Rectification order, found that the mistakes are not of any serious nature inviting penal action.

**PRAYER**

Considering the above facts, figures and explanation and those arguments which may be submitted at the time of hearing, your goodself may be pleased to cancel the penalty order.

Dated this 27<sup>th</sup> day of April, 2024.

**Appellant**

**2.** The brief facts of the case are that the assessee is a society and filed their return of income on 28/06/2016 declaring Nil income. Thereafter, the scrutiny assessment proceeding was made in which the income was assessed at Rs. 59,95,702/-. Further, the additions and disallowances were made in respect of the claim of corpus donation from abroad and the receipt from the sundry debtors and the income from the sale of vehicle. Thereafter, the assessee filed an appeal against the additions and disallowances. After the order of the Ld.CIT(A), the AO levied penalty u/s. 271(1)(c) of the Act for furnishing the inaccurate particulars. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and contended that there was no actual incomes reported inaccurately but because of some clarity, the said incomes of corpus donations was added to the income and therefore the said income is not a concealment for furnishing of inaccurate particulars. The assessee also contended that the Ld.CIT(A) had not confirmed the additions as seen from the rectification order and therefore in the rectification order, Nil demand was raised by the AO and therefore the penalty levied u/s. 271(1)(c) is not correct. The Ld.CIT(A) had not accepted the submissions made by the assessee and dismissed the appeal. As against the said dismissal order, the assessee is in appeal before this Tribunal.

**3.** At the time of hearing, the Ld.AR submitted that the order imposing the penalty u/s. 271(1)(c) is not a well considered order and the AO had not made out any case for imposing penalty u/s. 271(1)(c) of the Act. The Ld.AR further submitted that the ingredients to attract penalty u/s. 271(1)(c) was not there in the order and therefore the levy being the penalty, is liable to be set aside.

**4.** The Ld.DR relied on the order of the lower authorities and submitted that the penalty has been rightly imposed for furnishing inaccurate particulars.

**5.** We have heard the arguments of both sides and perused the materials available on record.

**6.** We have perused the order imposing penalty u/s. 271(1)(c) of the Act in which the AO had mechanically imposed the penalty on the ground that there are some inaccurate particulars furnished by the assessee. The AO had not considered the various submissions made before him and no concrete charge was made by the AO for imposing the penalty in the facts and circumstances of the case. As seen from the penalty order, the assessee submitted that there is no inaccurate particulars furnished by the assessee, everything was made available to the assessing officer and because of some clarity in respect of the corpus donations, the assessee had offered to treat the same as income and even the rectification order passed by the AO shows that there is Nil demand of tax and in such circumstances, the AO ought to have considered the issue in detail and gave a definite conclusion in order to impose penalty u/s. 271(1)(c) of the Act. The Ld.CIT(A) also not appreciated the said facts but confirmed the levy of penalty.

**7.** In such circumstances, we are of the considered opinion that the orders of the authorities below are liable to be set aside and we remit the issue to the file of the AO in order to give a concrete charge for levying the penalty after considering the objections filed by the assessee since the levy is a quasi criminal proceedings. We also make it clear that the penalty is not an automatic one and it depends upon the various factors which would be considered by the assessing officer at the time of passing the order.

**8.** In view of the disposal of the main appeal, the stay application becomes infructuous and the same is dismissed.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes and the stay application is dismissed as infructuous.

Order pronounced in the open court on 27<sup>th</sup> February, 2025.

Sd/-  
(INTURI RAMA RAO)  
Accountant Member

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Cochin,  
Dated, the 27<sup>th</sup> February, 2025.  
/MS /

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|---------------|---------------------|
| 1. Appellant  | 2. Respondent       |
| 3. CIT        | 4. DR, ITAT, Cochin |
| 5. Guard file | 6. CIT(A)           |

By order

Assistant Registrar,  
ITAT, Cochin