आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
एवं
श्री राकेश मिश्रा, लेखा सदस्य
के समक्ष
Before
SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. No.: 2447/KOL/2024
Assessment Year: 2016-17

Monish Ranjan Dasgupta	Vs.	ITO, Ward-61(3), Kolkata
(Appellant)		***(Respondent)***
PAN: AFCPD5730R		

Appearances:

Assessee represented by **:** Gautam Banerjee, AR.

Department represented by **:** Sanjoy Paul, Addl. CIT, Sr. DR.

Date of concluding the hearing : April 16th, 2025
Date of pronouncing the order : May 7th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2016-17 dated 15.03.2024, which has been passed against the penalty order under section 271(1)(c) of the Act, dated 17.02.2022.

1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 65 days. An application seeking condonation of delay has been filed by the assessee stating as under:

> *"The assessee is a non-resident and does not have regular place of residence in India. His tax affairs are too small and does not require regular handling. He did not receive the impugned order u/s. 250 dated 15.03.2024 in the mail address updated in portal. This was later discovered in his portal by his Authorized Representative by end of August 2024 while uploading his return of income. Thereafter some time passed in communicating to him and taking decision to file appeal. From the time the order u/s. 250 dated 15.03.2024 was identified, all steps were taken on urgent basis and the appeal is arranged to be filed. Due to absence of assessee from India and professional preoccupation of Chartered Accountant handling the matter the appeal before ITAT could not be filed earlier. The assessee was not negligent, careless, capricious or had no malafide or dilatory intention to delay any proceedings under the tax laws. Due to late receipt of information, the time gap between date of order and date of filing of appeal arises. There being reasonable cause for delay in filing of this appeal as compared from the date of the appeal order, the assessee prays for condonation of the delay in filing of this appeal. In case the delay is not condoned, the assessee will suffer irreparable loss and prejudice whereas in case the delay is condoned, no public policy will be prejudiced."*

1.2. On considering the application for condonation of delay and the reasons stated therein, we are satisfied that the assessee had a reasonable and sufficient cause and was prevented from filing the instant appeal within statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication on merits.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

> *"1. For that in the facts and circumstances of the case and in law, the direction of CIT(A)-NFAC to restrict the levy of penalty to 100% of tax sought to be evaded on the income of Rs. 8,00,190 is wrong, erroneous, arbitrary, misconceived, excessive and deserves to be quashed/set-aside/cancelled.*
>
> *2. For that in the facts and circumstances of the case and in law, the assessee did not have taxable income and cannot be made liable to penalty*

u/s. 271(1) for the sole ground of filing a return of income showing taxable income only.

3. For that the assessee craves leave to amend, alter, rescind, substitute and/or submit additional ground/grounds of appeal at the time of hearing of appeal."

3. Brief facts of the case as mentioned in the penalty order are that as per information received from the ITO(I&CI)-4, Kolkata it was found that the assessee had surrendered an annuity plan on 19/05/2015 held with Bajaj Allianz Life Insurance Company Limited bearing policy No.0154056804 and had received an amount of Rs.23,00,188/- on surrender of the said Asset Allocation Pension Fund. The assessee had claimed deduction u/s 80-CCC of the I.T. Act against the payment of the premium for the A.Ys 2010-11, 2011-12 & 2012-13, however, this fact was denied by the assessee in the course of the appeal proceedings before the Ld. CIT(A). As per Sub-Section (2) of Section 80-CCC of the I.T. ACT, the surrender value is taxable in the hands of the assessee in the year of receipts. The assessee had, however, not offered any income on this account. Accordingly, a notice u/s 148 of the I.T. Act dated 13-03-2020 had been issued and served upon the assessee. In response to the notice u/s 148 of the Income-tax Act, 1961, the assessee filed the return of income for the assessment year 2016-17 on 29.06.2020 declaring income of Rs.8,00,190/-. From the perusal of the Income-tax return. It was noted that the assessee had not added the amount of Rs. 23,00,188/- to the returned income and the assessment was made treating the same as 'income from other source'. Aggrieved with the assessment order, the assessee preferred an appeal before the Ld. CIT(A), who vide order dated 14.03.2024 deleted the addition of Rs. 23,00,188/- and the appeal was partly allowed. Subsequently, penalty under section under section 271(1)(c) of the Act was imposed at Rs.

6,90,178/-. Aggrieved with the penalty order, the assessee preferred an appeal before the Ld. CIT(A), who vide order dated 15.03.2024 restricted the penalty to 100% of the tax sought to be evaded on the income of Rs.8,00,190/- and the appeal was partly allowed. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

4. Rival submissions were heard and the record and the submissions made have been examined. During the course of the hearing, the Ld. AR drew our attention to the show cause notice issued u/s 274 r.w.s. 271(1)(c) of the Act by the Assessing Officer (hereinafter referred to as ld. 'AO') which is reproduced as under:

> "*Notice for Penalty under section 274 read with section 271(1)(c) of Income-tax Act, 1961*
>
> *3. You are required to submit your reply online electronically in 'e-Proceeding facility through your account in e-filing website (www.incornetax.gov.in) by the midnight (23:59 hours) of 22/09/2021,*
>
> *4. In case reply is not submitted, the order shall be passed without the benefit of your explanation*
>
> *Additional/Joint/Deputy/Assistant Commissioner of Income Tax Income-tax Officer, National Faceless Assessment Centre, Delhi*"

5. It was contended that this is the only notice available in which the default on the part of the assessee has not been specified nor any allegation either of concealment or furnishing of inaccurate particulars has been mentioned. During the impugned assessment year, the assessee had no income and the assessee only had made deposits of Rs. 5 Lakh each for insurance in AY 2010-11, AY 2011-12 and AY 2012-13 totalling to Rs. 15 Lakh which was prematurely withdrawn in AY 2016-17 for Rs. 23,00,188/-. The Ld. AO added the entire amount u/s 80CCC(2) of the Act to the income shown in the return filed in response

to the notice under section 148 of the Act. It was submitted that as the assessee had not made any claim of deduction in the year in which the instalment circuit and the assessee is an NRI, the source of income being foreign income, therefore, besides the notice being defective the assessee was not liable for imposition of any penalty.

5. The Ld. DR relied upon the decision of **Veena Estate (P.) Ltd. vs. Commissioner of Income-tax [2024] 461 ITR 483 (Bombay) [11-01-2024]** and vehemently argued that if no objection was raised earlier the same cannot be raised even before the Hon'ble High Court. The assessee complied before the Ld. AO as well as the Ld. CIT(A) and the Ld. AO gathered the details and assessee got the required relief from the Ld. CIT(A) and as the income had crystalized, no further relief was provided with the appeal. He argued that the penalty was liable to be confirmed.

6. The Ld. AR countered this argument by stating that there is no allegation against the assessee either of concealment or furnishing of inaccurate particulars in the show cause notice issued for levy of penalty and as no deduction had been claimed, no penalty could have been imposed.

7. In order to understand the issue, it is imperative to understand the provisions of section 80CCC (1) & (2) of the Act, which are reproduced as under:

> *"80CCC. (1) Where an assessee being an individual has in the previous year paid or deposited any amount out of his income chargeable to tax to effect or keep in force a contract for any annuity plan of Life Insurance Corporation of India or any other insurer for receiving pension from the fund referred to in clause (23AAB) of section 10, he shall, in accordance with, and subject to, the provisions of this section, be allowed a deduction in the computation of his total income, of the whole of the amount paid or deposited (excluding interest or bonus accrued or credited to the assessee's account, if any) as*

does not exceed the amount of one hundred and fifty thousand rupees in the previous year.

(2) Where any amount standing to the credit of the assessee in a fund, referred to in sub-section (1) in respect of which a deduction has been allowed under sub-section (1), together with the interest or bonus accrued or credited to the assessee's account, if any, is received by the assessee or his nominee—

(a) on account of the surrender of the annuity plan whether in whole or in part, in any previous year, or

(b) as pension received from the annuity plan,

an amount equal to the whole of the amount referred to in clause (a) or clause (b) shall be deemed to be the income of the assessee or his nominee, as the case may be, in that previous year in which such withdrawal is made or, as the case may be, pension is received, and shall accordingly be chargeable to tax as income of that previous year."

8. As would be evident, the provisions of sub-section (2) of section 80CCC of the Act can be invoked only when the assessee has claimed the deduction u/s 80CCC(1) of the Act in the year in which the investment was made and since the assessee argued before us that no such deduction was claimed in the three years in which the amounts were invested, therefore, there is no justification for the Ld. AO to make the addition. It was further argued that even if the assessee did not further contest the order of the Ld. AO as confirmed by the Ld. CIT(A), the assessee was not precluded from raising the issue and denying the income in the course of penalty proceedings as the penalty proceedings are separate proceedings from the assessment proceedings.

9. We have considered the submission made and since the claim that no such deduction was claimed or allowed in the earlier years of investment has been countered by the Ld. DR nor any counter evidence could be either submitted or any counter argument could be advanced by the Ld. DR, therefore, as per the provisions of section 80CCC(2) of

the Act, the assessee was not liable to be assessed in the year in which the withdrawal was made except for the income arising on account of accrued interest or bonus, which amount had been disclosed in the return filed in response to the notice issued under section 148 of the Act. Hence the Ld. CIT(A) reduced the addition to Rs. 8,00,188/- and the findings of the Ld. CIT(A) are as under:

> *"5.3 It is an admitted fact that the assessee has invested Rs.5,00,000/- each in F.Ys 2010-11, 2011-12 and 2012-13 but has not filed ITRs for the corresponding A.Ys.2011-12, 2012-13 and 2013-14, and claims that he did not have taxable Income in those years. Accordingly, it is assessee's contention that the assessee never claimed nor was allowed any deduction u/s.80CCC(1) of the Act, i.e., of Rs.1,50,000/- for each of these three assessment years.*
>
> *5.4 As can be seen the provisions of Section 80CCC(2), provide that the following amounts shall be chargeable to tax as income of the Previous Year in which the surrender value is received on account of withdrawal:*
>
> - *Any amount standing to the credit of the assessee in a fund, referred to in sub section (1) in respect of which a* ***deduction has been allowed under sub section (1)*** *and*
> - *The interest or bonus accrued or credited to the assessee's account*
>
> ***(emphasis supplied)***
>
> *5.5 Even though the assessee has failed to file ITR under section 139(1) of the Act for the Assessment year under consideration, but in response to notice u/s.148 of the Act the assessee has filed an ITR declaring a total income of Rs.8,00,188/- being the interest or bonus etc., credited to the assessee's account of the said policy. However, the assessee contends that he had not filed any ITR for AYs 2011-12,2012-13, 2013-14 and accordingly has neither claimed nor was allowed any deduction uls.80CCC(1) of the Act.*
>
> *5.6 Under the facts and circumstances of the case, there is merit in appellant's ground that the investments of Rs.5,00,000/- each made by him in the said policy, during the F.Ys. 2010-11, 2011-12 and 2012-13 cannot be brought to tax for the year under consideration i.e., A.Y. 2016-17. Further, it is seen that the AO has made an addition of the total surrendered value of Rs.23,00,188/- which is inclusive of Rs.8,00,188/-, and the same has been declared as income in the ITR filed by the assessee in response to notice u/s. 148 of the Act and therefore leads to double taxation on Rs.8,00,188/-. In view of the above discussion, the AO is directed to delete*

the addition of Rs.23,00,188/- and accordingly, this ground of appeal is allowed.

5.7 The second ground is regarding assessment of income at Rs.31,00,380/- and in this connection, it is to be stated that the detailed discussion w.r.t. the ground no.1 covers this ground as well and no further adjudication is needed in this regard. Accordingly, this ground is dismissed.

5.8 The third ground is regarding the reopening of assessment u/s. 147 of the Act and completion thereof ex-parte u/s.144 of the Act. In this regard. I have gone through carefully both the Assessment Order and the contentions of the appellant and it is held that this ground of appeal does not bear ment and is not substantiated by any cogent reason or documentary evidences and accordingly is dismissed.

5.9 The fourth and the last ground of appeal is residual and general ground and therefore does not need specific adjudication and accordingly the same is disposed off.

6. In the result, the appeal is partly allowed."

10. Thus, after the appeal order, the income shown in the return filed in response to the notice u/s 148 was the assessed income of the assessee. It is to be seen whether penalty under section 271(1)(c) of the Act is liable to be imposed when the returned income in the return filed in response to the notice under section 148 of the Act and the assessed income is the same. Similar issue arose in the case of **Amitabha Sanyal Income Tax Officer, Ward – 58(4), Kolkata, ITA No. 359/Kol/2022, ITAT 'B' Bench, Kolkata, AY: 2011-12** and vide order dated 06.11.2024 it has been held that no penalty is imposable if the returned income and the assessed income are the same. The relevant extract from the order of the co-ordinate Bench is as under:

11. However, as regards ground nos. 1, 3 and 5, on the issue of penalty on the returned income, the coordinate bench of the Tribunal, Delhi Bench, while deciding the appeal in the case of ***Meeta Gutgutia Vs. ACIT*** *in ITA No. 327/Del/2014 A.Y. 2008-09 vide order dated 31st March, 2023, have held as under: -*

> *"6. We have heard the rival submissions and perused the material on record. It is an undisputed fact that the returned income has been accepted, there is no satisfaction recorded by the assessing officer that assessee had concealed income with reference to return of income filed by him in response to notice u/s 148. Hon'ble Supreme Court in Varkey*

Chacko v. CIT [1993] 203 ITR 885 has held that a penalty for concealment of particulars of income or for furnishing inaccurate particulars of income can be imposed only when the assessing authority is satisfied that there has been such concealment or furnishing of inaccurate particulars. A penalty proceeding, therefore, can be initiated only after an assessment order has been made which finds such concealment or furnishing of inaccurate particulars. The penalty was permissible under the law on the date on which the offence of concealment of income was committed, that is to say, on the date of the offending return. Hon'ble Madras High Court in the case of CIT v. K.R. Chinni Krishna Chetty [2000] 246 ITR 121 has held that under section 271(1)(c) of the Act the authority is given the discretion to levy a penalty if there is concealment of particulars of income and even as regards the quantum of the penalty there is a discretion. Of greater importance is the necessity for a definite finding that there is concealment, as without such a finding of concealment, there can be no question of imposing any penalty. In the assessee's case, the AO has not given any finding in assessment order that the assessee had concealed any income or furnished inaccurate particulars of such income. He had simply accepted the returned income u/s 148. Hence assessee's case is covered by the decisions referred to above and penalty u/s 271(1)(c) will not be imposable. In CIT v. Suresh Chandra Mittal [2001] 251 ITR 963 (SC) the assessee filed revised returns showing higher income after search and notice for reopening of assessment, to purchase peace and avoid litigation and Department simply rested its conclusion on the act of voluntary surrender done by the assessee in good faith, High Court was justified in holding that no penalty could be levied. The assessee's case is on more strong footing as that of Suresh Chand Mittal (supra) decided by Hon'ble Supreme Court. As held in earlier paragraphs there should be variation in assessed and returned income and such variation should be as a result of concealment. It is not the case of assessing officer that penalty u/s 271(1)(c) has been imposed on certain additions made to the returned income. Hon'ble Delhi High Court in the case of M/S S.A.S. Pharmaceuticals (supra) while deciding the issue levy of penalty u/s 271(1)(c) in paragraph 15 has held as under:

> *"15. It necessarily follows that concealment of particulars of income or furnishing of inaccurate particulars of income by the assessee has to be in the income tax return filed by it. There is sufficient indication of this Court in the judgment in the case of Commissioner of Income Tax, Delhi-I Vs Mohan Das Hassa Nand 141 ITR 203 and in Reliance Petro products Pvt. Ltd (supra), the Supreme court has clinched this aspect, viz., the*

assessee can furnish the particulars of income in his return and everything would depend upon the income tax return filed by the assessee."

7. Therefore, in view of the facts of the case we are of the opinion that no penalty was imposable u/s 271(1)(c) of the Act and we accordingly direct the AO to delete the penalty."

12. Similar finding has also been given in the case of ***Armoury International Vs. Asst. CIT 21(3), Mumbai*** *in ITA Nos. 3299, 3300 & 3301/Mum/2017 for A.Ys. 2009-10 to 2011-12, vide order dated 1st January, 2019, wherein it has been held as under: -*

"7. In this case, since the assessed income and the returned income are the same, the machinery provision of penalty u/s 271(1)(c) fails. In this regard, we draw support from the of Hon'ble Delhi High Court decision in the case of CIT vs. SAS Pharmaceuticals [2011] 335 ITR 259 (Del). The Hon'ble High Court has expounded that penalty u/s 271(1)(c) can only be levied if in the course of proceedings, the A.O. is satisfied that there is an concealment or furnishing of inaccurate particulars. The words "in the course of any proceedings under this Act mean the assessment proceedings". However, the question 'whether there is concealment or inaccurate particulars' has to be determined with reference to the returned income. Accordingly, in the background of the aforesaid discussion and precedent, we set aside the order of the Ld. CIT(A) and delete the levy of penalty."

Hence, in view of the finding in the case of ***Meeta Gutgutia*** *(supra), in which reliance has been placed on the decision of Hon'ble Supreme Court in the case of Varkey Chacko (supra) and the decision of Hon'ble Delhi High Court in* ***M/S S.A.S. Pharmaceuticals*** *(supra), and also in the case of* ***Armoury International (supra),*** *if the compensation amount of ₹79,500/- is excluded, as the same was capital receipt in nature and therefore not liable to be added to the income, there remains no difference between the income returned in response to the notice u/s 148 of the Act and the income assessed u/s 143(3) read with section 147 of the Act. Hence, in view of the Hon'ble High Court's decision in case of M/s S.A.S. Pharmaceuticals (supra), no penalty was imposable u/s 271(1)(c) of the Act. We accordingly, direct the Ld. AO to delete the penalty levied. Hence, ground nos.1, 2 and 5 of the appeal are allowed.*

11. Since no proper show cause notice appears to have been issued for either concealment of income or furnishing inaccurate particulars of

income as the notice issued does not contain any such allegation therefore, the penalty sustained being 100% of the tax sought to be evaded on the income of Rs. 8,00,190/- is liable to be deleted. Since the assessee had not claimed any deduction in the year of investment and had shown the difference between the maturity amount and the total amount invested in the return filed for AY 2016-17 in response to the notice issued u/s 148 of the Act and the addition made for the amount invested in the earlier three years has been deleted by the Ld. CIT(A) for the reason that no such deduction was claimed, and even in the show cause notice issued for imposition of penalty no details of the default or the details of the proposed penalty to be imposed are mentioned, therefore, on the principles of natural justice itself, the entire penalty order is vitiated and the same is liable to be quashed. Thus, considering the entirety of the facts of the case, the order of the Ld. CIT(A) confirming part of the penalty is set-aside and the penalty sustained by the Ld. CIT(A) is hereby cancelled and the appeal of the assessee is allowed.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 7th May, 2025.

Sd/-	*Sd/-*
[**Pradip Kumar Choubey**]	[**Rakesh Mishra**]
Judicial Member	Accountant Member

Dated: 07.05.2025

Bidhan (P.S.)

Copy of the order forwarded to:

1. ***Monish Ranjan Dasgupta, C/o. Arijit Ghosh, AE-601, Sec-I, Salt Lake, Kolkata, West Bengal, 700064.***
2. ***ITO, Ward-61(3), Kolkata.***
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata