

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI
BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)
AND
SHRI OMKARESHWAR CHIDARA (ACCOUNTANT MEMBER)

I.T.A. No.1950/Mum/2025
Assessment Year: 2009-10

Mrs. Nayana D. Atekar H-308, Sharad Industrial Estate, Lake Road, Bhandup (West) Mumbai-400078 PAN:AFQPA0192J (Appellant)	Vs.	ITO Ward 29(2)(4) Mumbai Pratyakshakar Bhavan, C-10, BKC Bandra (East), Mumbai-400051 (Respondent)
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Appellant by	Shri D.K. Garg
Respondent by	Shri Lyaqat Ali Aafaqui, Sr. A.R.

Date of Hearing	05.05.2025
Date of Pronouncement	13.05.2025

ORDER

Per: Smt. Beena Pillai, J.M.:

The present appeal filed by the assessee arises out of order dated 10/02/2025 passed by NFAC, Delhi for assessment year 2009-10 on following grounds of appeal :

“1. On facts and circumstances of the case and in law Ld. CIT(A) erred in confirming penalty us 271(1)(c) of Rs 3,35,282/-.

2. *On facts and circumstances of the case and in law Ld. CIT(A) erred in confirming penalty us 271(1)(c) without appreciating the fact that assessment order us 143(3) rws 147 based on which penalty is levied, itself is quashed by Hon'ble ITAT SMC Bench Mumbai vide order number, ITA No 3537/Mum/2018 dated 07-02-2019.*
3. *On facts and circumstances of the case and in law Ld. CIT(A) erred confirming Penalty order without appreciating the fact that same is levied based on invalid show notice us 274 rws 271(1)© dated 9-10-2014, in as much as AO failed to indicate in such show cause notice under which limb of Sec 271(1), AO proposes to levy penalty le for concealing particulars of income or for furnishing inaccurate particulars of Income, as AO has not cancelled inappropriate words from printed notice us 204 ws 21(1).*
4. *On facts and circumstances of the case and in law Ld. CIT(A) erred in confirming penalty without appreciating the fact that there is no proper satisfaction rather there is no satisfaction at all recorded in assessment order. AO has simply mentioned in last para of assessment order that penalty proceedings us 271(1) is initiated for furnishing in accurate particulars of income. AO further mentions that issue show cause notice us 274 rws 271(1)(c) for concealment of income. Thus there is no proper satisfaction for initiating penalty proceedings.
Hence levy of penalty is bad in law. Assessee relies on following case laws*
 - (i) *Shri Samson Perinchery ITAT Mumbai Bench "E" dated 11-10-2013 ITA no 4625 to 4630/M/2013.
This decision is further affirmed by Hon'ble Bombay H C vide appeal No 1154 of 2014 dated 05-01-2017*
 - (ii) *CIT vs Manjunath Cotton & Ginning Factory (2013) 35 taxmann.com 250(Karnataka).*
5. *On facts and circumstances of the case and in law Ld. CIT(A) erred in rejecting assessee's application for condonation of delay of 65 days without assigning any reason.*
6. *On facts and circumstances of the case and in law Ld. CIT(A) erred in rejecting appeal without considering assessee's submission filed on 01-02-2025*
7. *On facts and circumstances of the case and in law Ld CIT(A) erred confirming levy of penalty without considering the fact that same is levied on addition of income of Rs 14,01,723/- on account of bogus purchases without appreciating the fact that assessee had*

supported all its purchases bills, payments made by account payee cheques and reflected in bank statements etc

8. *The appellant craves leave to consider each of the above ground of appeal as independent and without prejudice to each other and craves leave to add, alter, modify or delete any or all grounds of appeal”*

2. At the outset the Ld.AR submitted that, there was delay of 35 days in filing the appeal before the Ld.CIT(A) which was not condoned. He submitted that, the quantum addition arising out of the assessment order dated 15/09/2014 passed u/s. 143(3) r.w.s. 147 stands deleted by coordinate bench of this *Tribunal* in ITA No.3537/Mum/2018 vide order dated 07/02/2019.

2.1 The Ld.AR submitted that, since the Ld.CIT(A) did not grant opportunity to the assessee by condoning the delay, the said order of this *Tribunal* could not be placed before the first appellate authority.

2.2 On the contrary the Ld.DR relied on the orders passed by authorities below.

We have perused the submissions advance by both sides in the light of record placed before us.

3. It is noted that co-ordinate bench of this *Tribunal* quashed reassessment proceedings as consequence of which, the addition made there under stands deleted. This *Tribunal* while quashing the reassessment proceedings observed and held as under:

“5. I have heard the rival contentions and gone through the facts and circumstances of the case. I find from the facts of the case that the assessment was framed by the AO under section 143(3) read with section 147 of the Act vide order dated 15.09.2014. Admittedly, if the CIT(A) feels that the assessee has filed no return of income or the return filed by the assessee as null and void in the eyes of the law, the AO should have made assessment under section 144 of the Act. In the absence of return of income, no assessment can be framed under

section 143(3) of the Act. For framing assessment under section 143(3), the principle requisite condition is issuance of notice under section 143(2) of the Act. Admittedly, the AO failed to issue mandatory notice under section 143(2) of the Act before proceeding to complete the assessment. This issue is covered by the decision of Hon'ble Supreme Court in the case of Vs. Hotel Blue Moon (2010) 321 ITR 362 (SC). In view of the fact, I am of the view that once no notice under section 143(2) of the Act was issued, it is a mandatory jurisdictional issue and hence, assessee is invalid. Hence, I quash the assessment order and allow this appeal of the assessee”

4. Accordingly we do not find any reason to go into merit of the present penalty appeal as the addition based on which the penalty was initiated stands deleted. As a consequence the penalty levied does not have legs to stand and has to be deleted.

5. Accordingly the grounds raised by the assessee stands allowed.

In the result the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 13/05/2025

Sd/-

(OMKARESHWAR CHIDARA)
Accountant Member

Sd/-

(BEENA PILLAI)
Judicial Member

Mumbai:

Dated: 13/05/2025

Poonam Mirashi,
Stenographer

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)

ITAT, Mumbai