

IN THE INCOME TAX APPELLATE TRIBUNAL
“PATNA BENCH, PATNA
VIRTUAL HEARING AT KOLKATA

Before Shri Sonjoy Sarma, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.593/Pat/2024
Assessment Year: 2012-13

Sri Dinesh Baranwal.....Appellant

C/ M/s Salarpuria Jajodia & Co.,
7, C. R Avenue, 3rd Floor, Kol-72.

[PAN: ADKPG6603N]

vs.

ITO, Ward-1(3), Motihari..... Respondent

Appearances by:

Shri Siddharth Jhajharia, FCA, appeared on behalf of the appellant.

Shri Ashwani Kr. Singal, JCIT, appeared on behalf of the Respondent.

Date of concluding the hearing : July 23, 2025

Date of pronouncing the order : July 24 , 2025

आदेश / ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal has been filed by the assessee against the order dated 24.05.2024 passed by the NFAC for the Assessment Year 2012-13.

2. At the outset, it is noted that there is a delay of 57 days in filing the present appeal before the Tribunal. The assessee has filed a condonation petition explaining the reasons or such delay. After considering the submissions and materials on record, we are satisfied that there was reasonable cause for the delay in filing the appeal. Accordingly, the said delay is condoned, and the appeal is admitted for adjudication.

3. Brief facts of the case are that the assessee was a dealer of a telecom service operator, namely M/s Unitech Wireless Tamil Nadu Pvt.

Ltd., and several sub-dealers operated under the assessee's registration code. Commissions payable to sub-dealers were directly disbursed by Unitech Wireless. The assessee originally filed return of income declaring a turnover of Rs.28,01,521 under Section 44AD, disclosing profit of Rs.2,30,875 (at 853%). The return was processed under Section 143(1), and no demand was raised. Subsequently, a notice under Section 148 was issued, and the Assessing Officer completed the reassessment under Section 147 r.w.s. 144 vide order dated 09.12.2019, estimating income and initiating penalty proceedings under Sections 271(1)(c) of the act. The AO levied penalty of Rs.1,53,232 under Section 271(1)(c) vide order dated 21.12.2021. The assessee contended that no notice under Section 148 or 142(1) was ever received and hence, did not respond or file return in the re-assessment proceeding. The penalty order which was challenged before the ld. CIT(A), but the appeal was dismissed ex parte due to non-compliance.

4. Aggrieved by the above order assessee is in appeal before this tribunal, at the time of hearing before us, the learned AR submitted that the quantum order passed under Section 147 r.W.s. 144 dated 09.12.2019 had itself been set aside by the ld. CIT(A) in a separate order dated 28.03.2025, with the matter remanded to the Assessing Officer for fresh adjudication. Since the foundation of the penalty-i.e., the reassessment order dated 09.12.2019 longer survives, the penalty under Section 271(1)(C) cannot be sustained at this stage.

5. On the other hand, the learned DR opposed the prayer, but could not controvert the fact that the quantum assessment order has already been set aside.

6. We have heard both parties and carefully perused the material on record. It is settled law that when the quantum assessment order is set

aside, any penalty levied on the basis of such order cannot stand independently. In the present case, the order under Section 147 r.w.s. 144 dated 09.12.2019 which gave rise to the penalty under Section 271(1)(c), has been remanded to the file of the Assessing Officer by the Ld. CIT(A) vide order dated 28.03.2025. Accordingly, the penalty becomes premature and unsustainable in law at this stage. We, therefore, direct that the penalty of Rs.1,53,232/- levied u/s 271(1)(c) be deleted. The appeal of the assessee is stand allowed. However, it is made clear that this will not preclude the A.O from initiating fresh penalty proceedings, if warranted, after completion of the reassessment proceedings in accordance with law.

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

Kolkata, the 24th July, 2025.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 24.07.2025.

Copy of the order forwarded to:

1. Appellant -
2. Respondent -
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches