

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND  
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA No.1153/Bang/2025
Assessment Year: 2013-14

Dustven Pvt. Ltd., No.95, Rajagopalanagar Main Road, Ganapathy Nagar, Peenya 3 <sup>rd</sup> Phase, Peenya Industrial Estate, Bengaluru – 560 058.  <b>PAN – AAACD 5226 E</b>	Vs.	The Dy. Commissioner of Income Tax, Circle – 2(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri B.S Balachandran and Shri Ajith V, Advocates
Revenue by	:	Shri Balusamy N, JCIT

Date of hearing	:	31.07.2025
Date of Pronouncement	:	.09.2025

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

This is an appeal filed by the assessee against the order passed by the NFAC, New Delhi vide order dated 24-03-2025 in DIN No.ITBA/NFAC/S/250/2024-25/1074964949(1) for the assessment year 2013-14.

2. The assessee is a company engaged in the business of providing Dust Control Systems to coal handling plants. For AY 2013-14, the assessee did not file the return of income within the due date. Notice

under section 148 was issued. In response, the assessee filed a return declaring income of ₹1,20,25,275/-. The return was accepted in the assessment completed under section 147 r.w.s. 144B of the Act.

3. The AO issued notice under section 271(1)(c) r.w.s. 274 for concealment of income. The assessee explained that it suffered huge financial losses because of cancellation of coal block allocations by the Hon'ble Supreme Court. Orders placed on the assessee were cancelled when the systems were already manufactured or in process. The assessee faced severe financial stress, was referred to BIFR, and banks took action under SARFAESI Act. There were lay-offs and salaries could not be paid. However, the tax audit report was filed in time, but the return could not be filed due to these hardships.

3.1 However, the AO rejected the explanation. He held that had there not been reopening of the case, income would have escaped assessment. He observed that no voluntary effort was made by the assessee to file the return or seek condonation. Hence, the AO levied penalty u/s 271(1)(c) of Rs. 39,01,600.00 being 100% of the amount of tax sought to be evaded on account of concealment of income.

4. The assessee appealed before the Id. CIT-A. It was argued that there was no concealment. The income was already reported in the tax audit report. Return was filed in response to section 148 of the Act. Non-filing of return of income within the due date was due to financial crisis and bona fide mistake.

4.1 However, the Id. CIT(A) rejected the plea of the assessee. It was held that filing of Form 3CD alone is not compliance with section 139(1) of the Act. Non-filing of ROI before detection amounted to concealment of income. Accordingly, the explanation was not accepted. Hence, the grounds of appeal were dismissed and the penalty u/s 271(1)(c) was confirmed.

5. Being aggrieved the assessee is in appeal before us against the order of the Id. CIT(A), confirming penalty under section 271(1)(c) of the Income-tax Act, 1961.

6. The learned AR submitted that the assessee filed the tax audit report within the due date. This proves that accounts were maintained and there was no intention to conceal. Non-filing of return was a bona fide mistake caused by extraordinary circumstances, including illness of the authorised representative. The income was declared in response to notice under section 148 which was accepted by the AO. There was no false entry or inaccuracy in particulars. Accordingly, the Id. AR prayed that the penalty be deleted.

7. On the other hand, the Id. DR supported the orders of the AO and CIT(A).

8. We have heard both parties and considered the record. It is not disputed that the assessee is in the business of supplying Dust Control Systems. It is also not disputed that during the year the Hon'ble Supreme Court cancelled coal block allocations. As a result, orders

placed on the assessee were cancelled, though the assessee had already manufactured or was in the process of manufacturing systems. This caused huge financial loss. The assessee faced severe financial crisis. There were lay-offs of employees. The assessee was referred to BIFR and banks took action under SARFAESI Act.

8.1 It is also a fact on record that the assessee filed its tax audit report within the due date. This shows that the assessee maintained proper accounts and there was no intention to hide income. The return of income was not filed in time due to financial hardship and circumstances beyond control.

8.2 The AO levied penalty u/s 271(1)(c) on the ground that income would have escaped assessment, had there not been any reopening. The Id. CIT(A) confirmed. In our view, this conclusion is not correct. Penalty under section 271(1)(c) can be levied only where there is concealment of income or furnishing of inaccurate particulars. Mere non-filing of return in time, when all particulars are recorded in books and disclosed in tax audit report, cannot amount to concealment. The income was declared in response to notice u/s 148 of the Act. It was accepted by the AO. There is no finding that any entry in books or in audit report was false. The assessee's explanation is supported by facts. The company was in financial crisis due to cancellation of coal allocations. There was no deliberate act to conceal. The Revenue has argued that disclosure was not voluntary but only after detection. We are unable to agree. The assessee had already filed its tax audit report, showing income details, within the due date. This itself proves that there was no intent to

conceal. Filing of return after notice u/s 148 was only a procedural compliance. Therefore, we hold that the assessee's failure was only a bona fide lapse due to extraordinary circumstances. It cannot be equated with concealment or furnishing of inaccurate particulars. Hence, the penalty levied u/s 271(1)(c) is unjustified. Thus, the ground of appeal of the assessee is allowed.

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

Order pronounced in court on 9<sup>th</sup> day of September, 2025

Sd/-

**(SUNDARARAJAN K)**  
Judicial Member

Sd/-

**(WASEEM AHMED)**  
Accountant Member

Bangalore  
Dated, 9<sup>th</sup> September, 2025

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore