

**IN THE INCOME-TAX APPELLATE TRIBUNAL “D” BENCH,  
MUMBAI**

**BEFORE SHRI BEENA PILLAI, JUDICIAL MEMBER  
&  
SMT.RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.4086/MUM/2025  
(A.Y.2017-18)**

Diamond Grain Dealers Association Association Plot No. 15, R No.-4, Gate No. 6, New Collector Compound Malvani Malad West, Mumbai-400064.	Vs.	ITO Ward 41(3)(1) Kautilya Bhavan, Bandra, Mumbai-400051.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AABAD0815C</b>		
<b>Appellant</b>	<b>..</b>	<b>Respondent</b>

Appellant by :	Shri Bhupendra Shah
Respondent by :	Shri Annavarani Kosuri- Sr. AR

Date of Hearing	14.10.2025
Date of Pronouncement	31.10.2025

**आदेश / ORDER**

**PER RENU JAUHRI [A.M.] :-**

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 17.01.2025 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for the Assessment Year [A.Y.] 2017-18.

2. The grounds of appeal are as follows:

*“1. In the facts and circumstances of the case and in law, the Learned AO erred in n levying penalty u/s. 272A(1)(d) of the Act amounting to Rs. 30,000/- without appreciating the fact that Appellant is not well versed with taxation laws and only the consultant looks after their tax matters and the consultant to whom the work was assigned also did not take steps to comply.*

*2. In the facts and circumstances of the case and in law, the leaned CIT (A) erred in confirming the penalty without considering the submission of the Appellant.”*

3. The brief fact of the case are that the assessee did not file its return for A.Y. 2017-18 u/s. 139 (on or before 31.03.2018) and also failed to furnish the same in response to notice u/s. 142(1) issued on 13.03.2018. On the basis of information gathered under ‘Operation Clean Money’, it was noticed that the assessee had deposited cash of Rs. 12,00,550/- in its bank account with IDBI during the demonetization period from 09/11/2016 to 30.12.2016.

3.2 In view of non filing of return, ld. AO proceeded for completion of best judgment assessment under the provision of section 144(1)(b) and accordingly sent notices to the assessee. However, no compliance was made to any of the five notices issued by the ld. AO and therefore on the basis of information collected from the Banks regarding assessee’s accounts, Ld. AO proceeded to make the addition u/s. 69A of Rs. 19,9,14,302/- and also initiated penalty proceedings u/s. 272A(1) of the Act. Thereafter the ld. AO proceeded to impose the penalty for non-compliance to the 3 notices u/s. 142(1) of the Act and levied penalty of Rs. 30,000/- vide order dated 06.01.2022 @ 10,000/- for each default.

- 3.3 Aggrieved, the assessee preferred an appeal before ld. CIT(A). However, ld. CIT(A) has confirmed the penalty order. Aggrieved further, the assessee has filed an appeal before the Tribunal.
4. Before us, ld. AR has submitted that the assessment order has been set aside by ld. CIT(A) after considering the assessee's contentions that non compliance to notices u/s. 142(1) was due to genuine and bonafide reasons, and therefore the penalty for non compliance also deserves to be deleted. It was submitted that the assessee, an AOP, is registered under the Bombay Public Trust Act, 1950 since 1994. It is carrying out the activity of distribution of food grains and other items through public distribution system (PDS) to the public at large. The margin of profit is very meagre and as such there was no taxable income. It is a very small organization having no suitable employees to handle the taxation matters and the assessee was dependant on a tax consultant who did not guide them properly. It had not filed its return since there was no taxable income and was advised by the consultant that no return was required to be filed. Ld. CIT(A) has already set aside the assessment order to ld. AO for fresh assessment after considering the assessee's explanation. It is further submitted by the assessee that no compliance could be made to the notices as these were sent to the wrong side of the compound where no one was there to receive these notices.

Under these circumstances, ld. AR argued that the unintentional lapse occurred in complying with the notices u/s. 142(1) and it is not a fit case for imposition of penalty.

4.2 Ld. DR on the other hand, strongly relied on the orders of the lower authorities and argued that simply because, its income was low, there was no justification for not complying with the multiple notices issued by the ld. AO and, therefore, the penalty has been rightly imposed for persistent non-compliance.

5. We have heard the rival submissions and perused the material placed on record. Before us, ld. AR has submitted that subsequent to the levying of impugned penalty, the ld. CIT(A) has decided the quantum appeal vide order dated 17.01.2025 whereby, after considering the assessee's submission regarding non compliance to the notices issued by ld. AO as well as on merits, he has set aside the AO's order to give another chance to the assessee to represent his case.

5.2 After considering the totality of facts and circumstances of the case, we are of the considered view that it is not a fit case for levy of penalty u/s. 272A as the assessee has been able to demonstrate bonafide reasons for non-compliance. Accordingly the penalty order u/s. 272A(1) is hereby set aside.

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

Order Pronounced in Open Court on 31.10.2025

Sd/-

(BEENA PILLAI)

(JUDICIAL MEMBER)

Sd/-

(RENU JAUHRI)

(ACCOUNTANT MEMBER)

Place: Mumbai

Date 31.10.2025

Anandi.Nambi/STENO

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.