

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Visakhapatnam Bench, Visakhapatnam**

**Before Shri Ravish Sood, Judicial Member**  
**and**  
**Shri Balakrishnan S., Accountant Member**

आ.अपी.सं / **ITA No.465/Viz/2025**  
(निर्धारण वर्ष / Assessment Year: 2017-18)

Cherukuri Veeraju, Rajahmundry. PAN:ABXPC6760H	Vs.	Deputy Commissioner of Income Tax, Circle-1, Rajahmundry.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Sri GVN Hari, Advocate	
राजस्व द्वारा / Revenue by:	Dr. Aparna Villuri, Sr. AR	
सुनवाई की तारीख / Date of Hearing:	08/10/2025	
घोषणा की तारीख / Date of Pronouncement:	13/10/2025	

**आदेश / ORDER**

**PER. RAVISH SOOD, JM :**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 27/05/2025, which in turn arises from the order passed by the Additional/Joint Commissioner of Income Tax, National Faceless Assessment Centre (NaFAC), Delhi under Section 271D of the

Income Tax Act, 1961 (for short “the Act”) dated 09/02/2022 for A.Y. 2017-18. The assessee has assailed the impugned order on the following grounds of appeal before us:

1. “The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.
2. The learned Commissioner of Income Tax (Appeals) is not justified in dismissing the appeal ex-parte.
3. Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) ought to have held that the order dt.09.02.2022 u/s 271D of the Act is barred by limitation
4. The learned Commissioner of Income Tax (Appeals) ought to have held that the assessing officer is not justified in levying penalty of Rs.44,07,020 u/s 271D of the Act.
5. Any other grounds may be urged at the time of hearing.”

2. Succinctly stated, the assessee had filed his return of income for the Assessment Year 2017-18 on 30/12/2017, declaring an income of Rs. 3,83,81,950/-. Thereafter, the case of the assessee was selected for complete scrutiny and notice under Section 143(2) of the Act was issued.

3. Thereafter, the AO vide his order passed under Section 143(3) of the Act, dated 26/12/2019, assessed the income of the assessee at Rs. 3,90,48,450/-. Also, a perusal of the assessment order reveals that the AO, taking cognizance of the fact that the

assessee had on sale of certain immovable properties received part sale consideration in cash, initiated penalty proceedings under Section 271D of the Act.

4. Thereafter, the Additional/Joint Commissioner of Income Tax, NaFAC, observed that the assessee during the subject year had carried out certain transactions of sale of immovable property, viz., (A) sale of immovable property to four persons viz., (i) Smt. Adireddy Veeraraghavamma; (ii) Smt. Jagarapu Venkata Botsa; (iii) Shri. Adireddy Srinivasu; and (iv) Shri Kantipudi Rajendra Prasad for a total sale consideration of Rs. 1,39,57,020/- (out of which an amount of Rs. 26,57,020/- was received by him in cash); and (ii) sale of property to two persons, viz. (i) Smt. Jagarapu Venkata Botsa; and (ii) Adireddy Srinivasu, vide Document No.436/2017, for a sale consideration of Rs. 2,60,00,000/- (out of which an amount of Rs. 17,50,000/- was received in cash). The AO based on the fact that the assessee on sale of the aforementioned properties had received cash sale consideration of Rs. 44,07,020/- , thus called upon him to explain that as to why he may not be subjected to penalty under Section 271D of the Act. As the

assessee had failed to come forth with any explanation, therefore, the Additional/Joint Commissioner of Income Tax, NaFAC, imposed a penalty of Rs. 44,07,020/- under Section 271D of the Act.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, as the assessee, despite having been put to notice on three occasions, had failed to participate in the appellate proceedings, therefore, the CIT(A) was constrained to dismiss the appeal for want of prosecution.

6. The assessee, being aggrieved by the order of the CIT(A), has carried the matter in appeal before us.

7. Sri GVN Hari, Advocate, the learned Authorized Representative (for short, "Ld. AR") for the assessee, at the threshold of hearing of the appeal, submitted that the CIT(A) had grossly erred in law and facts of the case in summarily dismissing the appeal for want of prosecution. Elaborating on his contention, the Ld. AR submitted that though the assessee had failed to participate in the proceedings before the CIT(A), but the latter had

grossly erred by not adjudicating the specific grounds of appeals based on which the impugned order was assailed before him and had dismissed the appeal on the standalone ground of want of prosecution. The Ld. AR submitted that though the assessee had vide his "Ground of Appeal No. 3" specifically assailed the validity of the impugned order of penalty passed by the AO under Section 271D of the Act, on the ground that the same was imposed beyond the prescribed time period contemplated under Section 275(1)(c) of the Act, but the same had remained unanswered by him. Apart from that, the Ld. AR submitted that the assessee, in his grounds of appeal, had though also assailed the imposition of penalty under Section 271D of the Act by drawing support from the immunity provided under Section 273B of the Act and a host of judicial pronouncements, but there is no whisper in the CIT(A) order qua the said issue. It was, thus, the Ld. AR's contention that the impugned penalty order cannot be sustained and is liable to be set-aside.

8. Per contra, Dr. Aparna Villuri, the learned Senior Departmental Representative (for short, "Ld. DR"), relied upon the orders of the lower authorities.

9. We have heard the Learned Authorized Representatives of both parties, perused the orders of the lower authorities, and the material available on record.

10. Admittedly, it is a matter of fact borne from the record that the assessee, despite having been afforded three opportunities to participate in the proceedings before the CIT(A), i.e., vide notices dated 20/02/2024, 14/11/2024, and 28/11/2024, had failed to comply with the same. Although, we principally concur with the CIT(A) that the failure on the part of the assessee/appellant to affect compliance to the notices intimating the fixation of the appeal could not have stalled the said proceedings, which, had to be proceeded with, but at the same time are unable to persuade ourselves to subscribe to the manner in which he had disposed of the present appeal. We say so, for the reason that though the assessee had specifically assailed the validity of the jurisdiction assumed by the AO for imposing the impugned penalty vide order passed by him

under Section 271D of the Act, dated 09/02/2022, inter alia, for the reason that the same was imposed beyond the prescribed period envisaged under Section 275(1)(c) of the Act, which as claimed by the assessee was to be reckoned from the date on which the AO had recommended the issuance of “Show Cause Notice” (SCN) to the Additional/Joint Commissioner of Income Tax, NaFAC, but we find that there is no whisper in the CIT(A) order on the said issue. In our view, the CIT(A), despite the absence of participation by the assessee/appellant in the proceedings before him, could have disposed of the aforesaid issue based on the facts borne on the record.

11. Apart from that, we find that the CIT(A) had also refrained from dealing with the specific ground of appeal that was raised by the assessee/appellant before him, wherein it was claimed that no penalty under Section 271D of the Act based on the immunity contemplated under Section 273B of the Act was liable to be imposed in his case. In fact, we find that the assessee to support his claim had even pressed into service certain judicial pronouncements.

12. Be that as it may, we are of a firm conviction that the CIT(A), in the backdrop of the aforesaid specific issues that were raised by the assessee/appellant before him, ought to have passed a speaking order dealing with the same, which we find he had miserably failed to do.

13. We are unable to concur with the manner in which the appeal had been disposed of by the CIT(A) based on a non-speaking order. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom). In the aforementioned case, the Hon'ble High Court by referring to Section 251(1)(a) and (b) and "Explanation" to Sec. 251(2) of the Act, had observed that the CIT(A) is required to apply his mind to all the issues which arises from the impugned order before him whether or not the same had been raised by the appellant before him. It was further observed that the law does not empower the CIT(A) to dismiss the appeal for non-prosecution, as is evident from the provisions of the Act. For the sake of clarity, we deem it apposite to cull out the observations of the Hon'ble High Court, as under:

"8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Sec. 251(1)(a) and (h) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-s. (2) of s. 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under s. 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non- prosecution of the appeal by the assessee. This is amply clear from the s. 251(1)(a) and (b) and Explanation to Sec. 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act."

14. We, thus, in terms of our aforesaid deliberations, set-aside the order passed by the CIT(A) and restore the matter to his file with a direction to re-adjudicate the appeal based on a speaking order after considering the specific issues on which the impugned order had been assailed before him. Needless to say, the CIT(A)

shall, in the course of the set-aside proceedings, afford a reasonable opportunity of being heard to the assessee.

15. Resultantly, the appeal filed by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court on 13<sup>th</sup> October, 2025.

<b>Sd/- (BALAKRISHNAN S.) ACCOUNTANT MEMBER</b>	<b>Sd/- (RAVISH SOOD) JUDICIAL MEMBER</b>
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Hyderabad,  
Dated 13<sup>th</sup> October, 2025  
**\*OKK / SPS**

Copy to:

S.No	Addresses
1	Cherukuri Veeraju, D.No. 24-14-4, RV Nagar, Rajahmundry, Andhra Pradesh – 533105.
2	The Deputy Commissioner of Income Tax, Circle-1 O/o. ITO, Aayakar Bhavan, Veerabhadrapuram, Rajahmundry, Andhra Pradesh – 533105.
3	The Pr.CIT, Visakhapatnam
4	The DR, ITAT Visakhapatnam Bench
5	Guard File

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