

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
MS. PADMAVATHY S, ACCOUNTANT MEMBER
ITA No. 5653/MUM/2025 (AY: 2013-2014)**

(Physical hearing)

DCIT (Exemptions) – 1(1), Mumbai 6 th Floor, MTNL Building, Cumballa Hill, Pedder Road, Mumbai – 400026.	Vs	Laxminarayan Mandir Trust Ground Floor, Bapu Bhai Vasi Road, Vile Parle (West), Mumbai – 400056. [PAN: AAATL2061J]
Appellant / Revenue		Respondent / Assessee

Assessee by	Shri B.N. Rao, AR
Revenue by	Shri Surendra Mohan, Sr. DR
Date of Institution	10.09.2025
Date of hearing	13.11.2025
Date of pronouncement	13.11.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by revenue is directed against the order of Id. CIT(A) dated 07.07.2025 for A.Y. 2013-14. The revenue has raised following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in partly allowing the appeal of the assessee against the penalty order passed u/s 221(1) of the Act, without appreciating that the assessee had defaulted in payment of demand amounting to 11,71,89,552/"

2. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that the demand u/s 221(1) is to be recomputed after giving credit of taxes paid, without appreciating that the penalty u/s 221(1) is levied for default in payment and is not dependent upon subsequent adjustment of demand".

3. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing the Assessing Officer to recalculate the demand under section 221(1) in light of ITAT's order for A.Y. 2013-14, whereas the appeal

before the Ld. CIT(A) pertains only to the penalty order u/s 221(1) and not to the quantum assessment."

4. "On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the levy of penalty u/s 221(1) was justified in view of the admitted default in payment of tax demand and that subsequent relief in quantum proceedings does not obliterate the default that had already occurred.

5. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not considering that the decision of the Hon'ble ITAT in ITA No3235/Mum/2022 dated 18.09.2023 in the case of assessee for AY 2013-14 has not been accepted by the revenue and appeal u/s. 260A of the Act has been filed before the Hon'ble Bombay High Court in ITXA(L) No 10396/2024 on 26.03.2024."

6. The appellant craves leave to add, amend, alter vary and/or withdraw any of the grounds of appeal,"

2. Rival submissions of both the parties have been heard and record perused.

The learned Senior Departmental Representative (Id. Sr. DR) for the revenue submits that while passing the assessment order, the assessing officer made an addition of Rs. 21.85 Crore received on sale of certain flat of assessee and also made addition of Rs. 1.66 Crore as notional interest. Due to addition in the assessment order a demand of more than Rs. 10.00 crore was generate. The assessee was not making the payment of tax, the assessing officer accordingly levied the penalty under section 221 for default in payment demand of tax. The assessing officer levied penalty of Rs. 1.71 crore. The Id CIT(A) has deleted the penalty by giving order giving effect to the order of Tribunal in quantum assessment, wherein the addition has already been deleted, however, the department has already

filed appeal before jurisdiction High Court, therefore, he supports the order of assessing officer in levy of penalty under section 221.

3. On the other hand, Id. Authorised Representative (Id. AR) of the assessee submits that against the addition in quantum assessment, the Tribunal has deleted entire addition in ITAs No. 3235 & 3273/M/2022 thereby no tax demand was left. The Id. AR of the assessee while explaining the fact would submit that assessee is a public charitable trust. During financial year relevant to assessment year (A.Y.) 2013-14 under consideration, the assessee received various sums by way of advance against sale of certain flats which the assessee owned. The assessee is governed by Mumbai Public Trust Act, so obtained statutory approval from Charity Commissioner before alienating in immovable property. The assessing officer held that advance received on sale of certain flat/ asset held by the assessee were to be assessed and made addition of Rs. 21.85 crore and the addition of notional interest of Rs. 1.66 crore on advance.
4. On appeal before Id. CIT(A) the additions of Rs. 21.85 Crore was deleted but the addition of interest of Rs. 1.66 Crore was upheld. Both the parties have filed their respective appeal before Tribunal vide ITAs No. 3235 & 3273/M/2022, wherein the assessee was allowed relief in both the appeals, thus, the order passed by assessing officer will not survive thereby penalty demand has to be cancelled as per section 221(2). The Id. AR furnished copy of order in quantum assessment as well as order of Tribunal.

5. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully in quantum assessment as well as in the present penalty proceedings. We find that addition in the quantum assessment has ultimately been deleted by Tribunal in its order dated 18.09.2023. Thus, the penalty order passed under section 221(1), in any will not survive. Thus, we affirmed the order of Id. CIT(A) and direct the AO to pass order giving effect immediately on service of this order. In the result, the grounds of appeal raised by revenue are dismissed.
6. In the result, appeal of the revenue is dismissed.

Order was pronounced in the open Court on 13 /11/2025.

Sd/-

**PADMAVATHY S.
ACCOUNTANT MEMBER**

Sd/-

**PAWAN SINGH
JUDICIAL MEMBER**

Mumbai, Dated: 13/11/2025
Biswajit

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai