IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI

BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)

ITA No. 5752/MUM/2025
Assessment Year: 2011-12

Janseva Majoor Sahakari Sanshtha Maryadit, Room No. 1 Talmajlaopp Vadke House, T H Kataria Marg, Mahim, Mumbai-400016. **PAN NO. AADFJ 0626 J** **Appellant**	***Vs.***	ITO 22(1)(6), Piramal Chambers, Lower Parel, Mumbai-400012. **Respondent**

Assessee by : Mr. Piyush Chhached
Revenue by : Ms. Kavitha Kaushik, Sr. DR

Date of Hearing : 12/11/2025
Date of pronouncement : 25/11/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 07.06.2018 passed by the Ld. Commissioner of Income-tax (Appeals) – 33, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2011-12 (sic). The grounds raised by the assessee are reproduced as under:

1. On the facts and Circumstances of the case and in law, the Ld. Commissioner of Income-Tax (Appeals) erred in confining Penalty

u/s 271(1)(c) of the Income-Tux Act without appreciating that the notice issued us 274 r.w.s 271(1)(c) did not Rs. 0 state as to why the penalty proceedings were initiated te whether for concealment OR furnishing of inaccurate particulars and therefore notice itself was bad in law and consequently the Penalty Order passed u/s 271(1)(c).

2. On the facts and Circumstances of the case and in law, the Ld Commissioner of Income-Tax (Appeals) erred in confirming Penalty u/s 271(1)(c) without appreciating that the Assessment Order passed u/s 144 did not bring out as to whether the Penalty was initiated for concealment OR furnishing of inaccurate particulars.

3. On the facts and Circumstances of the case and in law, the Ld Commissioner of Income Tax (Appeals) failed to appreciate that the quantum addition was made purely on the estimated basis without finding as to concealment of income OR furnishing of inaccurate of income and therefore penalty cannot be imposed

4. On the facts and circumstances of the case, the Ltd. Commissioner of Income-Tax (Appeals) erred in confirming the Penalty of Rs.8,89,073/- on the Quantum Addition of Rs. 28,87,260/- without appreciating that the quantum addition was made on estimated basis being 10% of the Gross Receipts in an Order passed u/s.144 r.w.s. 147 of the Income Tax Act.

2. At the outset, the Ld. counsel for the assessee submitted that there was a delay of 2570 days in filing the present appeal. The Ld. counsel submitted that penalty order u/s 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') for assessment year 2010-11 and 2011-12 were passed against the assessee on 29.09.2014 levying penalty of Rs.22,68,409/- and Rs.8,89,073/- respectively. Against which, the assessee preferred appeal before the Ld. CIT(A). The Ld. CIT(A) disposed off the appeal for assessment year 2010-11 vide order dated 07.06.2016 and against which the assessee preferred appeal before the Income-tax Appellate Tribunal, wherein the penalty was deleted vide order dated 27.06.2018. But the appeal for

assessment year 2011-12 however was disposed off by the Ld. CIT(A) on 07.06.2018 confirming the penalty of Rs.8,89,073/- but in the said order dated 07.06.2018 inadvertently the Ld. CIT(A) mentioned the assessment year as 2010-11 and therefore, assessee misunderstood the same as appeal for assessment year 2010-11 and did not take any action presuming that appeal said assessment year was already disposed off by the Income-tax Appellate Tribunal. Under this misunderstanding appeal for AY 2011-12 could not be filed within limitation period. The relevant submission of the assessee is reproduced as under:

> *"2. Penalty order u/s 271(1)(c) for AY 2010-11 and 2011-12 were passed against the co-operative society dated 29.09.2014 levying a penalty of Rs. 22,68,409/- and Rs. 8,89,073/- respectively, against which appeals were preferred before CIT (Appeals).*
>
> *3. Subsequently, the Co-operative society received an order of CIT (Appeals) - 33 for AY 2010-11 dated 07.06.2016 against which the society preferred further appeal before the Hon'ble Income Tax Appellate Tribunal. The Hon'ble Tribunal, vide its order dated 27.06.2018, deleted the penalty.*
>
> *4. For A.Y. 2011-12, the Society had also preferred an appeal before CIT(A) and the Hon'ble CIT (Appeals) passed the order dated 07.06.2018 wherein the penalty of Rs. 8,89,073 was confirmed.*
>
> *5. However, in the said CIT (A) order dated 07.06.2018, under the Nirdhaaran varsh (assessment year) column (Sr. No. 3), the year was erroneously mentioned as 2010-11 instead of 2011-12. Therefore, the staff of the co-operative society being an illiterate person only conveyed the year of the order passed to the society members as well as the consultants without going into the contents of the order.*
>
> *6. The Co-operative society on perusal of the CIT(A) order was under the bonafide belief that the order pertains to AY 2010-11*

since the co-operative society was under appeal before Hon'ble Income Tax Appellate Tribunal for AY 2010-11. It overlooked the said CIT Appeal order and felt that no action needs to be taken since the matter was already heard before Hon'ble Income Tax Appellate Tribunal on 23.05.2018 and subsequently the order was passed on 27.06.2018 & Penalty for AY 2010-11 was deleted.

7. Thus, two different orders were passed by CIT (A) for AY 2010-11 and the matter was heard by Hon'ble ITAT and the penalty was deleted. No separate order of CIT(A) for A.Y. 2011-12 was reflected on the Income Tax Portal, nor was the penalty demand of Rs. 8,89,073/- shown as outstanding therein.

8. Therefore, due to the mistake in the CIT Appeal Order regarding the assessment year which actually should have been A.Y. 2011-12 but was wrongly mentioned as A.Y. 2010-11, there was confusion about the said order and hence the appeal against the said CIT Appeal order was not preferred before Hon'ble Income Tax Appellate Tribunal.

9. Therefore, due to the above circumstances i.e. clerical error in the CIT Appeal order dated 07.06.2018 with regards to the assessment year, there has been a delay of 2570 days in filing the appeal. Accordingly, an affidavit for application for condonation of delay is hereby being filed.

10. The Co-operative society, its trustees and members had no intention to jeopardize the interest of revenue by delaying the filing of the appeal and it is only due to typing mistake in the CIT Appeal order and confusion about the assessment year amongst the members and the staff that the appeal skipped to be filed."

3. Before us, the Ld. Departmental Representative (DR) however objected for the condonation of the delay. The Ld. DR referred to the decision of the Hon'ble Supreme Court in the case of Siva Industries and Holdings Ltd. v. Asst. CIT [2023] 157 taxmann.com 416 (SC). The Ld. DR referred to the said decision and submitted that the inordinate delay in filing appeal was neither due to paucity of time in view of financial crisis which led to proceedings nor due to lack of error or dismissal has been due to negligence and failed to

demonstrate sufficient cause for delay and same could not be condoned.

4. In rejoinder, the Ld. counsel for the assessee submitted that assessee has demonstrated a sufficient cause for delay in filing the appeal. The Ld. counsel relied on the various decisions of the Hon'ble Supreme Court.

5. We have heard rival submissions of the parties on the issue of condonation of the delay in filing the appeal. Under the provisions of Act, an appellant is required to file the appeal within 60 days of the receipt of the order of the Ld. CIT(A) and if there is a delay in filing the appeal within the limitation period, then u/s 253(5) of the Act, the assessee has to justify the delay in filing the appeal by way of application supported by the affidavit. While examining the issue of the condonation of the delay, the Tribunal is required to examine the acceptability of the explanation of the 'sufficient cause' submitted by the assessee. The law on condonation of delay is now well settled. It is a salutary principle, enunciated by the Hon'ble Supreme Court in *Collector, Land Acquisition v. Mst. Katiji & Ors.* [(1987) 167 ITR 471 (SC)], that while construing the expression "sufficient cause" under section 5 of the Limitation Act, a liberal and justice-oriented approach ought to be adopted so as to advance the cause of substantial justice. The Hon'ble Supreme Court has observed that a litigant does not stand to benefit by lodging an appeal late and that refusal to condone delay may result in a

meritorious matter being thrown out at the very threshold, thus defeating the cause of justice.

5.1 On perusal of the affidavit of the assessee filed explaining the delay in filing appeal, we find that misunderstanding happened mainly for the wrong mentioning of the assessment year by the Ld. CIT(A) in the appellate order. In our opinion, the delay happened on the part of the assessee was not due negligence of any sort on the part of assessee, thus the decision relied upon by the ld DR is not applicable. Accordingly, we accept the explanation of the assessee in support of delay. The delay in filing the appeal is accordingly condoned and appeal is admitted for adjudication.

6. We have heard rival submissions of the parties in the grounds raised in the appeal. With reference to ground No. 1 of the appeal, the Ld. counsel for the assessee submitted that the Assessing Officer has not stricken off the relevant limb of the penalty, which was levied u/s 271(1)(c) of the Act. The Ld. counsel relied on the decision of the Hon'ble Supreme Court in the case of SS Emerald Meadows (2016) 73 taxmann.com 248(SC). The Ld. counsel referred to the copy of the notice available on Paper Book page 1. The Ld. counsel submitted that Tribunal in assessment year 2010-11 on identical issue has decided the issue in dispute in favour of the assessee. The relevant finding of the Tribunal is reproduced as under:

"4. Before us, the Ld. A.R. has taken a legal plea challenging the validity of notice issued under section 274 read with section 271(1)(c) to argue that the AO has issued vague notice without specifying the charge under which the penalty is proposed to be levied, therefore, the whole penalty proceeding is vitiated, consequently, penalty levied by the AO cannot survive under law. The Ld. A.R. for the assessee referring to the copy of show cause notice issued by the AO dated 13.03.13 submitted that the AO has issued printed format of notice without striking off inapplicable clauses in the notice which amounts to non application of mind by the AO, whether the penalty proceeding has been initiated for concealment of particulars of income or furnishing of inaccurate particulars of income and in this regard the Ld. A.R. relied upon the decision of Hon'ble Supreme Court in the case of CIT vs. SSA'S Emerald Meadows (2016) 242 Taxman 180 (SC) and also the decision of Hon'ble Bombay High Court in the case of CIT vs. Samson Perinchery (2017) 392 ITR 4 (Bombay).

5. On the other hand, the Ld. D.R. strongly supporting the order of the Ld. CIT(A) submitted that it is a clear case of deliberate attempt to conceal particulars of income which is evident from the fact gathered by the AO during the course of assessment proceeding that the assessee neither filed its regular return of income under section 139(1) nor filed return in response to notice under section 148 of the Act. Had the case not been reopened under section 148 on the basis of information available with the department, the income would have escaped assessment. Therefore, the AO was right in levying the penalty under section 271(1)(c) and his order should be upheld.

6. We have heard both the parties and perused the material available on record. The AO levied penalty under section 271(1)(c) of the Act, by issuing notice under section 274 read with section 271(1)(c) dated 13.03.13. On perusal of the notice issued by the AO, we find that the AO has issued printed format of notice without striking off irrelevant/inapplicable portion in the notice simply by using tick mark in the portion where the two charges specified in the said show cause notice. The assessee has challenged the notice issued by the AO in the light of the decision of Hon'ble Supreme Court in the case of CIT vs. SSA'S

Emerald Meadows (supra), wherein the Hon'ble Supreme Court has dealt the issue of notice issued under section 274 read with section 271(1)(c) and held that if the AO did not issue proper notice specifying under which limb of section 271(1)(c) penalty proceeding had been initiated, then the whole proceeding becomes initiated, consequently penalty levied under section 271(1)(c) cannot survive under law. We, further, observe that the Hon'ble Supreme Court while dismissing SLP filed by the Department, by following the decision of Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 held that if the AO issued a vague notice without specifying under which limb penalty proceeding has been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income then the notice issued by the AO is bad in law. Consequently, the penalty proceeding initiated is liable to be quashed. The Hon'ble Bombay High Court in the case of CIT vs. Samson Perinchery (supra) has taken a similar view in the light of notice issued under section 274 read with section 271(1)(c) and held that order imposing penalty has to be made only on ground of which penalty proceeding has been initiated and it cannot be on a fresh ground of which assessee has no notice. In this case, on perusal of notice issued by the AO, we find that the AO has issued vague notice without specifying the charge under which penalty is initiated. Therefore, we are of the considered view that the penalty proceeding initiated by the AO is vitiated. Consequently, the penalty levied under section 271(1)(c) cannot survive under law. Accordingly, we direct the AO to delete penalty levied under section 271(1)(c) of the Act."

6.1 As far as issue of notice for penalty issued year under consideration, without striking off the relevant limb of penalty, in view of facts and circumstances of present appeal being identical to AY 2010-11, respectfully following the finding of the Tribunal for assessment year 2010-11, the penalty levied by the Assessing

Officer is cancelled and the order of the Ld. CIT(A) is set aside. The ground of appeal of the assessee accordingly allowed.

6.2 The arguments on ground challenging levy of penalty on estimation of addition are rendered academic only, hence we are adjudicating thereon.

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

Order pronounced in the open Court on 25/11/2025.

Sd/-	**Sd/-**
(SANDEEP GOSAIN)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 25/11/2025
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai