आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 2231/CHNY/2025**

निर्धारण वर्ष/Assessment Year: 2018-19

M/s. Mercy Education Trust, No.66, Sree Gokulam Towers, Arcot Road, Kodambakkam, Chennai – 600 024.	Vs.	**The Income Tax Officer,** Non-Corporate Ward 19(6), Chennai.
PAN: AACTM 6190M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri N. Arjun Raj, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri N. Rajakumar, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 27.01.2026
घोषणा की तारीख/Date of Pronouncement : 29.01.2026

आदेश/ O R D E R

PER GEORGE GEORGE K, VICE PRESIDENT:

This appeal filed by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 26.06.2025 passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The order of the CIT(A)-NFAC arise out of the

order imposing penalty u/s.272A(2)(e) of the Act amounting to Rs.7,80,500/-. The relevant Assessment Year is 2018-19.

2. The grounds raised read as follows:-

1. The order of the NFAC, Delhi dated 26.06.2025 vide DIN & Order No. ITBA/NFAC/S/250/2025-26/1077832375(1) for the above mentioned assessment year is contrary to law, fact and in circumstances of the case.

2. The NFAC, Delhi erred in sustaining the levy of the penalty under Section 272A(2)(e) of the Act to the tune of Rs. 7,80,500/- for the failure to file return of income in terms of Section 139(4A) of the Act without assigning proper reasons and justification.

3. The NFAC, Delhi failed to appreciate that the provisions in section. 272A(2)(e) of the Act had no application to the facts of the present case and ought to have appreciated that the mechanical application of the penal provisions should be reckoned as bad in law.

4. The NFAC, Delhi failed to appreciate that return of income filed in response to Notice under Section 148 of the Act should be construed as a return of income filed in terms of Section 139(4A) of the Act and ought to have appreciated that the levy of penalty in terms of Section 272A(2)(e) was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.

5. The NFAC, Delhi failed to appreciate that there was no scope for levying penalty under consideration in consequence to incorrect assumption of jurisdiction under Section 147 of the Act by the JAO instead of the FAO, effective from 28.03.2022 and ought to have appreciated that the penalty order passed in this regard should also be reckoned as bad in law.

6. The NFAC, Delhi failed to appreciate that order imposing penalty under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

7. The NFAC, Delhi failed to appreciate that in the absence of requisite recording of satisfaction of violation of penal provisions in Section 272A(2)(e) of the Act forming part of the order of re-assessment coupled with the issuance of vague show cause notice without incorporating the precise charge would vitiate the consequential penalty order passed.

8. The NFAC, Delhi failed to appreciate that in any event, the failure to file the return of income within the time stipulated in Section 139(4A) of the Act was neither willful nor deliberate but due to the reasons beyond the control of the appellant especially the bonafide understanding on the non-requirement of filing the ROI mandatorily to make the claim for exemption under Section 10(23C) (iiiad) of the Act and further ought to have appreciated that the levy of penalty under such circumstances should be reckoned as bad in law.

9. The NFAC, Delhi failed to appreciate that in any event, the present penal provisions under consideration should be subjected to reasonable cause in terms of Section 273B of the Act and further ought to have appreciated that the discretion vested with the Assessing Officer for passing/not passing the penalty order was not exercised properly/ independently, thereby vitiating the impugned order in its entirety.

10. The NFAC, Delhi failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

11. The Appellant craves leave to file additional grounds/arguments at the time of hearing

3. Brief facts of the case are as follows: The assessee is a trust engaged in running a B.Ed degree college. The college is recognized by University of Calicut. For the assessment year 2018-19, assessee trust did not file its return of income u/s.139 of the Act. The Jurisdictional Assessing Officer (JAO) issued notice

u/s.148 of the Act on 30.03.2022. The reason for issuance of notice u/s.148 of the Act was that assessee had made cash deposit of Rs.53,78,015/- and received interest of Rs.1,74,278/-. In response to notice u/s.148 of the Act, assessee filed return of income on 09.11.2022 for the relevant assessment year declaring 'nil' income after claiming exemption u/s.10(23C)(iiiad) of the Act. During the course of assessment proceedings, the assessee submitted financial statement along with the schedules & annexures and details of bank accounts held by the assessee. The assessee also submitted cash book, cash flow statement, etc. The reassessment was completed after due verification of evidences and the books of accounts, by accepting the income disclosed by the assessee in its return of income. However, in the assessment proceedings, the AO initiated penalty proceedings u/s.272A(2)(e) of the Act for non-furnishing of return of income within the due date prescribed u/s.139 of the Act.

4. The assessee was served by the notice u/s.274 r.w.s.272A(2)(e) of the Act directing it to explain why penalty under the said section should not be imposed. In response to notice issued u/s.274 r.w.s.272A(2)(e) of the Act, assessee filed its reply on 04.04.2023 and 31.05.2023. It was submitted that

the gross receipt of the institution is less than Rs.1 crore, hence, the income of the institution do not form part of the total income as per section 10(23C)(iiiad) of the Act. It was submitted that assessee was under a bonafide belief since income was exempted u/s.10(23C)(iiiad) of the Act, it was not obliged to file the return of income. It was further submitted that there is no loss to the exchequer since the return filed by the assessee was accepted in the assessment framed u/s.147 r.w.s.144B of the Act on 06.03.2023. In support of its contention that assessee trust was under bonafide belief since its income was exempt u/s.10(23C)(iiiad) of the Act and was not required to file the return of income, the assessee relied on various case laws. However, the contentions raised by the assessee was rejected by the AO and he passed an order on 25.09.2023 u/s.272A(2)(e) of the Act imposing penalty of Rs.7,80,500/- [i.e., Rs.500/- x 1561 days delay].

5. Aggrieved by the order of the AO imposing penalty u/s.272A(2)(e) of the Act, assessee filed appeal before the First Appellate Authority (FAA). Before the FAA, assessee trust reiterated the submissions made before the AO. The FAA however rejected the contentions of the assessee. The FAA held that

ignorance of assessee of statutory filing of return is not a reasonable cause as mandated u/s.273B of the Act and confirmed the penalty imposed u/s.272A(2)(e) of the Act.

6. Aggrieved by the order of FAA, assessee has filed the present appeal before the Tribunal. The assessee has filed a paper-book enclosing therein the trust deed, order of the University of Calicut recognizing the assessee's college, financials for the relevant assessment year, notices and replies filed during the course of reassessment proceedings, penalty proceedings, appellate proceedings and the case laws relied on, etc. The Ld.AR by referring to Ground No.5, submitted that notice u/s.148 of the Act has been issued by the Jurisdictional Assessing Officer (JAO) instead of Faceless Assessing Officer (FAO) on 30.03.2022. It was submitted that subsequent to coming into force of the CBDT Notification dated 29.03.2022, the JAO does not have power to issue notice u/s.148 of the Act and it ought to have been issued by the FAO. In support of his contention, the Ld.AR relied on the judgment of the Hon'ble Jurisdictional High Court in the case of TVS Credit Services Ltd. v. DCIT in W.P. No. 22402 of 2024. Further, the Ld.AR submitted that the assessee though not challenged the reassessment proceedings has the right to raise a

legal issue challenging vires of reassessing in the present penalty proceedings which has arisen from the reassessment order. In support of his contention the Ld.AR relied on the order of the Chennai Bench of the Tribunal in the case of Thomas Victor vs. ITO in ITA No.2987/Chny/2024 (order dated 28.10.2025).

7. The Ld.DR on the other hand contended that if AO's reopening proceedings was bad in law, the assessee ought to have challenged the same before the FAA and not in the present penalty proceedings. The Ld.DR stated that assessee having kept quiet and accepted the reassessment order cannot be allowed to agitate in this proceeding about the AO's action for initiating reassessment in a penalty proceeding by the faceless authority. Accordingly, the Ld.DR submitted that the penalty imposed u/s.272A(2)(e) of the Act does not call for any interference.

8. In rejoinder, the Ld.AR submitted that assessee's return of income has been accepted in the reassessment order completed. Hence, there was no cause of action for challenging the said reassessment order before the appellate authority. However, it was submitted that since assessee is aggrieved by the collateral proceedings [i.e., penalty imposed u/s.272A(2)(e) of the Act],

which stems from the reassessment order, assessee trust is free to challenge the vires of the reassessment proceedings in the present penalty proceedings in which, it is aggrieved. On merits, the Ld.AR reiterated the submissions made before the lower authorities that there is reasonable cause as mandated u/s.273B of the Act for deletion of penalty.

9. We have heard rival submissions and perused the material on record. Admitted facts on record is penalty u/s.272A(2)(e) of the Act has been initiated during the course of completion of reassessment proceedings vide order dated 06.03.2023. The relevant portion of the said order at para 5 reads as follows:-

> *"5. Assessed u/s 143(3) rws 147 rws 144B of the Income-tax Act, 1961. Penalty proceedings u/s 272A(2)(e) have been initiated separately for the year under consideration. Computation of income and demand notice u/s 156 of the Act is issued."*

10. The above reassessment order has been accepted by the assessee trust and no appeal has been preferred since the income returned by assessee trust was accepted. On identical facts, the Chennai Bench of the Tribunal in the case of Thomas Victor, (*supra)* had held that assessee in the said case was entitled to challenge the vires of the reassessment proceedings in the penalty proceedings initiated u/s.271D of the Act (though the

reassessment order was not challenged). In that context, the Chennai Bench of the Tribunal had placed reliance on various judicial pronouncements in support of its conclusion that assessee is entitled to challenge the collateral proceedings. Thereafter, the Chennai Bench of the Tribunal following the Hon'ble Jurisdictional High Court judgment in the case of Mark Studio India (P.) Ltd., vs. ITO in WA No.781 of 2025 (order dated 24.06.2025) and other Hon'ble High Courts judgments held since the notice has been issued by the JAO subsequent to coming into force the notification issued by the CBDT dated 29.03.2022, the said notice issued u/s.148 of the Act is invalid hence, consequent proceedings are also bad and quashed the penalty order u/s.271D of the Act. The relevant finding of the Chennai Bench of the Tribunal in the case of Thomas Victor (*supra*) reads as follows:-

> *16. Having heard both parties, the first aspect which needs to be examined is whether in the present proceedings wherein assessee has challenged the levy of penalty, the assessee is entitled to challenge the validity of initiation of reopening proceedings as well as the validity of the assessment order framed pursuant thereto u/s 147 of the Act. The Ld.AR for the assessee submitted before us that it is open to an assessee in an appeal against the penalty order u/s. 271D of the Act, to challenge the validity of the order passed u/s.147 of the Act as well as initiation of proceedings u/s.147 of the Act. In this regard other than the case laws cited supra, the Ld.AR for the assessee placed before us two decisions one rendered by Lucknow Bench of Tribunal in the case of Inder Kumar Bachani (HUF) vs ITO 99 ITD 621 (Luck) and the Mumbai Tribunal ' G ' Bench in the case of M/s. Westlife Development Ltd. Vs Principal C.I.T. in ITA No.688/Mum/2016. In both the decisions a view has been taken by the Tribunal that when an Assessment order passed u/s 147 of*

the Act was without jurisdiction, the Ld. PCIT cannot invoke the jurisdiction u/s 263 of the Act against such void or non-est order. In the second decision cited, the Mumbai bench of the Tribunal has specifically framed the following questions :-

> " 1. Whether the assessee can challenge the validity of an assessment order during the appellate proceedings pertaining to examination of validity of order passed u/s 263?
> 2. Whether the impugned assessment order passed u/s 143(3) dated 24-10-2013 was valid in the eyes of law or a nullity as has been claimed by the assessee?
> 3. If the impugned assessment order passed u/s 143(3) was illegal or nullity in the eyes of law, then, whether the CIT had a valid jurisdiction to pass the impugned order u/s.263 to revise the non est assessment order?"

17. On question no. 1 and 3 which is relevant to the present case the Mumbai bench of the Tribunal in the aforesaid case of M/s Westlife Development Ltd. (supra) has taken the view that when the original assessment proceedings are null and void in the eyes of law for want of assumption of jurisdiction, then such validity can be challenged even in collateral proceedings. We note that the Mumbai bench took the view that the proceedings before AO u/s.147 of the Act are primary proceedings and proceedings before Ld.PCIT u/s.263 of the Act are collateral proceedings and in such collateral proceedings, the validity of initiation of the re-opening u/s 147 of the Act can be challenged. The Mumbai bench of the Tribunal in this regard has placed reliance on several decisions, the main decision being that of the Hon'ble Supreme Court in the case of Kiran Singh & Ors. V. Chaman Paswan & Ors. [1955] 1 SCR 117 wherein the Hon'ble Supreme Court observed as follows (relevant portion):-

> " It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."

18. The Mumbai bench of this Tribunal made a reference to another decision of the Hon'ble Supreme Court in the case of Sushil Kumar Mehta v. Gobind Ram Bohra, (1990) 1 SCC 193 and the decisions in the case of Indian Bank v. Manilal Govindji Khona (2015) 3 SCC 712. The Mumbai bench also held that if order of assessment passed u/s 147 of the Act was nullity in the eyes of law then that order cannot be revised by invoking powers u/s 263 of the Act by CIT. The Mumbai Bench has in this regard placed reliance on the decision of Delhi bench of the Tribunal in the case of Krishna Kumar Saraf v. CIT in ITA NO.4562/Del/2007 order dated 24.09.2015 wherein it was held as follows (relevant portion):-

" 17. There is no quarrel with the proposition advanced by Id. DR that the proceedings u/s 263 are for the benefit of revenue and not for assessee.

18. However, u/s 263 the Id. Commissioner cannot revise a non est order in the eye of law. Since the assessment order was passed in pursuance to the notice U/S 143(2), which was beyond time, therefore, the assessment order passed in pursuance to the barred notice had no legs to stand as the same was non est in the eyes of law. All proceedings subsequent to the said notice are of no consequence. Further, the decision of Hon'ble Madras High Court in the case of CIT Vs. Gitsons Engineering Co. 370 ITR 87 (Mad) clearly holds that the objection in relation to non service of notice could be raised for the first time before the Tribunal as the same was legal, which went to the root of the matter.

19. While exercising powers u/s 263 Id. Commissioner cannot revise an assessment order which is non est in the eye of law because it would prejudice the right of assessee which has accrued in favour of assessee on account of its income being determined. If Id. Commissioner revises such an assessment order, then it would imply extending/ granting fresh limitation for passing fresh assessment order. It is settled law that by the action of the authorities the limitation cannot be extended. Because the provisions of limitation are provided in the same

20. In view of above discussion ground no.3 is allowed and revision order passed u/s 263 is quashed."

19. The Lucknow Bench of the Tribunal in DCIT v. B.J.D. Paper Products [2012] 20 taxmann.com 314 (Lucknow) has held as under (relevant portion): -

> "8.6 We have already discussed hereinabove that the decision of Hon'ble Rajasthan High Court in the case of Deep Chand Kothari v. CIT (supra) is also in favour of the assessee and therefore we are of the view that the validity of assessment proceedings can be looked into during the penalty proceedings even though the assessment itself has not been challenged by the assessee. In that view of the matter, we do not see any merit in this submission of the learned Departmental Representative that validity of assessment order cannot be challenged in appeal against the order of penalty."

20. The Pune Bench of the Tribunal in Tushar R. Jagtap v. ACIT [ITA Nos.725 to 725/Pun/2015 dated 09.02.2018] has held as under (relevant portion): -

> "25. However, in view of the ratio laid down by the jurisdictional High Court in CIT Vs. Lalitkumar Bardia (supra) in turn, relying on the ratio laid down by the Apex Court in Kanwar Singh Saini Vs. High Court of Delhi (supra), wherein it has been held that conferment of jurisdiction was a legislative function and the same neither conferred with the consent of parties nor by superior court and where the Court passes an order / decree having no jurisdiction over the matter, it would amount to nullity as the same goes to the roots of the issue. Applying the said principle, we hold that the assessee can challenge the jurisdiction of Assessing Officer in passing the assessment order while challenging levy of penalty under section 271(1)(c) of the Act. In case the reassessment proceedings have been completed without proper jurisdiction entrusted upon the Assessing Officer, then the consequent penalty proceedings are also affected as basic issue of conferment of jurisdiction upon the Assessing Officer is under challenge. Accordingly, we hold so."

21. In the context of appeal against penalty order passed u/s.271D of the Act, it is noted that Pune Bench of this Tribunal in M/s.Karia Brothers v. ITO in ITA No.2401/Pun/2024 dated 23.07.2025 held as under (relevant portion):-

"29. Since the assessee can always challenge the validity of assessment proceedings during the penalty proceedings as per the decision of Hon'ble Bombay High Court in the case of B.R. Bamasi vs. CIT (supra) and the decision of the Hon'ble Gujarat High Court in the case of P.V. Doshi vs. CIT (supra) and the various other decisions relied on by the Ld. Counsel for the assessee in the paper book and since we have already held that the re-assessment proceedings are not in accordance with law on account of not obtaining the approval from the competent authority as per the provisions of section 151 of the Act, therefore, the penalty proceedings initiated u/s 271D of the Act do not survive. In view of the above discussion, the penalty proceedings initiated by the Assessing Officer and sustained by the Ld. CIT(A) / NFAC are not in accordance with law and are liable to be quashed. We, therefore, hold that the penalty levied by the Assessing Officer and sustained by the Ld. CIT(A) / NFAC being not in accordance with law is liable to be deleted. We accordingly direct the Assessing Officer to cancel the penalty levied u/s 271D of the Act. The original grounds and the additional grounds raised by the assessee are accordingly allowed."

22. After having considered the judicial precedent on the issue, we are of the view that the validity of the 147 order passed by the AO can be assailed before us, even if for any reason, the assessee didn't challenge the validity of proceedings u/s.147 of the Act by filing appeal [i.e. against the order framed u/s.147 of the Act], it can be challenged in the collateral proceedings, i.e. even in an appeal against penalty order passed u/s.271D of the Act. As noted this issue has been analyzed by the Mumbai Bench of the Tribunal in the case of M/s.Westlife Development Ltd. (supra) wherein the Tribunal has equated the reopening assessment u/s.147 to primary proceedings and the subsequent proceedings by Ld. PCIT u/s.263 passed to be collateral proceedings. In this order the Tribunal has taken note of several ratio's of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court held that if the primary proceedings are non-est in law or void on the ground of lack of jurisdiction, then the validity of such proceedings can be challenged even in an appeal arising out of collateral proceedings. Since we have already set out the ratio/operating portions of these decisions we do not wish to repeat the same for the sake of brevity. In the light of the aforesaid discussion we are of the view that the invalidity of the primary

proceedings for lack of jurisdiction can be challenged even in appellate proceedings arising out of a collateral proceeding. In view of the aforesaid legal position we will now examine the legal issue. For doing that first of all we have to examine whether the Jurisdictional Assessing Officer [JAO] in the present case, could have reopened the assessment of the assessee by issuance of notice dated 31.03.2022 u/s.148 of the Act (which ultimately resulted in Faceless Assessing Officer [FAO] passing the assessment order u/s.147 of the Act dated 28.03.2023).

23. In the present case, we note that the JAO, Shri S. Nagarajan, Non-Corporate Ward-19(6), Chennai, has issued statutory reopening notice u/s.148 of the Act on 31.03.2022 and thereafter reassessment order was passed by the Faceless Assessing Officer (FAO) by order dated 28.03.2023 which action we find is not in consonance with Sec.151/151A of the Act read with the faceless Scheme notified by CBDT on 29 March 2022 for assessment, reassessment or re-computation u/s.147/issuance of notice u/s.148 of the Act or for conducting of inquiry or issuance of show cause notice or passing of order u/s.148A of the Act or sanction for issuance of notice under section 151 of the Act. The CBDT, in exercise of the powers conferred u/s.151A of the Act, is noted to have issued the notification dated 29.03.2022 [after laying the same before each House of Parliament] and formulated a Scheme called "the e-Assessment of Income Escaping Assessment Scheme, 2022" (herein after 'the Scheme'). And that the Scheme provides that (a) the assessment, reassessment or re-computation u/s.147 of the Act and (b) the issuance of notice u/s.148 of the Act shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in Section 148 of the Act for issuance of notice and in a faceless manner, to the extent provided in Section 144B of the Act with reference to making assessment or reassessment of total income or loss of assessee. Therefore, the impugned notice u/s 148 dated 31.03.2022 is noted to have been issued by JAO and not by the FAO, NFAC, which action is in contravention of the provisions of the Act, thus violating the principles of Rule of Law, which vitiates the reopening of the assessment; as held by the jurisdictional High Court & other Hon'ble High Courts as noted infra: -

Sl.No.	Date	Citation
1	24.06.2025	Mark Studio India (P.) Ltd. v. Income-tax Officer - High Court of Madras [DB] - WA No. 781 OF 2025, order dated 24.06.2025
2	14.09.2023	Kankanala Ravindra Reddy v. Income-tax Officer High Court of Telangana - 156 taxmann.com 178
3	03.05.2024	Hexaware Technologies Ltd. v. Assistant Commissioner of Incometax High Court of Bombay - 464 ITR 430
4	20.05.2024	Ram Narayan Sah v. Union of India - High Court of Gauhati 163 taxmann.com 478
5	02.07.2024	Sushila Sureshbabu Malge v. Income-tax Officer - High Court of Bombay - 468 ITR 624
6	19.07.2024	Jatinder Singh Bhangu v. Union of India High Court of Punjab & Haryana - 466 ITR 474
7	24.07.2024	Sri Venkataramana Reddy Patloola v. Deputy Commissioner of Income Tax, Circle 1(1), Hyderabad and Others High Court of Telangana - 468 ITR 181 [W.P.No.13353, 16141 & 16877 of 2024]
8	29.07.2024	Jasjit Singh v. Union of India - High Court of Punjab & Haryana - 467 ITR 52
9	05.08.2024	Samp Furniture Pvt. Ltd. v. Income Tax Officer, Ward 3(3)-Thane & Ors High Court of Bombay - 165 taxmann.com 581
10	05.08.2024	Kairos Properties Private Limited v. ACIT, Circle-15(1)(2), Mumbai & Ors - High Court of Bombay-468 ITR 168
11	29.08.2024	W.P.No.23573/2024 in the Case of ADIT(Int Taxn), Hyderabad v. Deepanjan Roy followed the decision in W.P.No.13353 of 2024 dated 24.07.2024 [Sri Venkataramana Reddy Patloola (supra)]
12	05.02.2025	Sappahire Educational & Charitable Trust v. The ITO, Exemptions Ward, Trichy. - Income Tax Appellate Tribunal, Chennai - ITA Nos.2416 & 2417/CHNY/2024
13	24.04.2025	Tecumseh Products India (P.) Ltd. v. Deputy Commissioner of Income-tax High Court of Telangana - 174 taxmann.com 1203

24. Even though, the Ld.DR supporting the action of the JAO issuing notice u/s.148 of the Act submitted that both the NFAC & JAO have got concurrent jurisdiction and therefore, notice is valid and also submitted that there was no prejudice caused to the assessee. Therefore, she asserted that the action of the JAO issuing notice is valid and doesn't want us to interfere with the action of AO and instead, wants us to dismiss the legal issue and she cited the decision of the Hon'ble Delhi High Court & Hon'ble Calcutta High Court as well as the Hon'ble Single Bench of Madras High Court in favor of the Revenue and cited the following orders:

• Triton Overseas (P) Ltd. v. Union of India – Calcutta High Court – 156 Taxmann.com 318
• T.K.S. Builders (P) Ltd. v. ITO – Delhi High Court – 469 ITR 657
• Mark Studio India (P.) Ltd. v. Income-tax Officer, High Court of Madras 169 taxmann.com 542, order dated 20.12.2024

25. We have heard both the parties and perused the material available on record. The brief facts are that the assessee is noted to be an individual and didn't file his Income Tax Return (ITR) for AY 2015-16 u/s.139 of the Act. Later, the case was reopened by the Jurisdictional Assessing Officer (JAO) u/s.147 of the Act by issuing notice u/s.148 of the Act dated 31.03.2022, pursuant to it, the assessee filed ITR declaring taxable income at ₹4.59,630/-. And thereafter, Faceless Assessing Officer (FAO) framed the assessment u/s.147 r.w.s.144B of the Act on 28.03.2023 accepting the returned income. Later on, the Income Tax Authority/NFAC has exercised his jurisdiction u/s.271D of the Act by issuing Show Cause Notice (SCN) on 28.03.2023 and pursuant to it, assessee filed his reply dated 06.07.2023. Not satisfied with the reply of assessee, the Income Tax Authority/NFAC levied penalty u/s.271D of the Act to the tune of ₹67,01,050/-. The aforesaid action of the NFAC has been challenged on the ground that the very re-assessment order [28.03.2023 u/s.147 r.w.s.144B of the Act] is non-est in the eyes of law [since the JAO erroneously issued notice u/s.148 of the Act, therefore, the re-opening of assessment itself was bad in law and non-est in the eyes of law being a nullity] and therefore, the action of the NFAC to levy penalty u/s.271D of the Act dated 29.09.2023 is a nullity/null in the eyes of law. For the proposition, that the JAO doesn't have jurisdiction to issue notice u/s.148 of the Act on or after 29.03.2022, he relied on the binding decision of the Hon'ble Madras High Court in the case of Mark Studio India Pvt. Ltd. (supra), wherein their Lordships have held that it is mandatory for the FAO to issue the notice u/s.148 of the Act on or after 29.03.2022 and if it has been issued by the JAO then such notice u/s.148 of the Act would be invalid [i.e. the notice issued by the JAO will be invalid]. For such a proposition, the Hon'ble Madras High Court is noted to have followed the decision of the Hon'ble Bombay High Court in the case of Hexaware Technologies Limited v ACIT & Ors. [2024] 464 ITR 430 (Bom). The Hon'ble Madras High Court has held in Mark Studio India Pvt. Ltd. as under:

All these petitions got listed in view of difference of opinion between two learned Single Judges.

2. Learned Single Judge in order dated 20.12.2024 in WP Nos.25223 of 2024 held that it does not matter if the Jurisdictional Assessing Officer (JAO) issues the notice and it is not mandatory that it should be issued by the Faceless Assessment Officer (FAO). Another learned Single Judge in order dated 21.04.2025 in WP No.22402 of 2024 and batch cases, followed what was held by the Bombay High Court in Hexaware Technologies Ltd vs. Assistant Commissioner of Income Tax'; and opined that it was mandatory for the FAO to issue notice and issuance of notice by JAO would make the notice invalid.

3. Learned Single Judge thereafter directed the matter to be placed before the Chief Justice for constituting a Division Bench to consider the divergent views. It is, therefore, all these matters were listed before us today.

4. We follow the law as laid down in Hexaware Technologies Ltd (supra), the said judgment was authored by one of us (Chief Justice), that it is mandatory for the FAO to issue the concerned notices and issuance thereof by the JAO would make the notice invalid.

5. Counsels for assessees are ad idem that the law as laid down in Hexaware Technologies Ltd (supra) will apply. Learned Additional Solicitor-General, however, submits that the Revenue does not accept the law as laid down in Hexaware Technologies Ltd (supra); and that there is a special leave petition filed against the order and judgment in Hexaware Technologies Ltd (supra) and the same is expected to be taken up after the Supreme Court reopens.

6. Admittedly, learned Additional Solicitor-General, in fairness, states that there is no stay. Therefore, the law as laid down by Hexaware Technologies Ltd (supra) applies.

7. It is clarified that if the Apex Court reverses the judgment of Hexaware Technologies Ltd (supra), parties will be governed by the decision of the Apex Court.

8. Keeping open all rights and contentions of parties, including liberty to apply to this Court, in case the Revenue succeeds before the Apex Court, for revival of these petitions, the notices issued in these petitions are quashed and set aside.

9. In these petitions, apart from the issue of notices issued by JAO instead of FAO, all or many of the issues which were considered in Hexaware Technologies Ltd (supra) are involved.
10. To the extent the issues raised in Hexaware Technologies Ltd (supra) are not covered, those are kept open to be raised at the appropriate stage.
11. With the liberty as noted above, all petitions stand disposed of holding in favour of assessees. There will be no order as to costs. Consequently, the interim applications also stand disposed of.

26. Applying the ratio laid down by the jurisdictional High Court, we find that in the present case, the JAO, Shri S. Nagarajan, NCW-19(6) Chennai had issued notice u/s.148A(b) to the assessee on 17.03.2022, and thereafter the JAO, passed order under Clause (d) of Section 148A of the Act on 31.03.2022 holding that it was a fit case for issuance of notice u/s.148 of the Act. And pursuant thereto, assessment/re-assessment was completed on 28.03.2023 by the FAO. Thereafter, the NFAC had initiated the penalty u/s.271D of the Act dated 28.03.2023 and the penalty u/s.271D of the Act was imposed on the assessee vide order dated 29.09.2023. Such an impugned action of the NFAC has been challenged by the assessee by raising additional ground which challenges the legal validity of the notice issued u/s.148 of the Act by the JAO [S. Nagarajan] on 31.03.2022. We find merit in the legal issue raised by the assessee and find that notice u/s.148 of the Act issued on 31.03.2022, violative of the binding Circular of CBDT and therefore invalid in the eyes of law.

27. Having held that the assessment order dated 28.03.2023 in the assessee case for AY 2015-16 as void in the eyes of law, the impugned action of the Addl.CIT/NFAC to initiate & levy penalty by order dated 29.09.2023 is also null in the eyes of law. For such a proposition, we rely on the legal maxim "sublato Fundmento Credit opus" meaning in case a foundation is removed, the super-structure falls. In Badarinath v. Tamil Nadu AIR 2000 SC 3243, wherein the Hon'ble Supreme Court held that once the basis of proceedings is gone, all consequential orders & acts would fall on the ground automatically which is applicable to judicial and quasi judicial proceedings. Therefore, it is held that the impugned order of NFAC passed u/s.271D dated 29.09.2023 is also null/non-est in the eyes of law. Therefore, we quash the impugned order of penalty u/s.271D of the Act."

11. In the instant case, admittedly notice has been issued by the JAO on 30.03.2022 and not by the FAO which is not in accordance with the CBDT Notification dated 29.03.2022. In light of the above, we set aside the impugned notice issued under section 148 of the Act and consequential order of penalty passed pursuant thereto. Hence, penalty order u/s.272A(2)(e) of the Act which stems from the reassessment order is quashed.

12. Since we have decided the issue on legal grounds in favour of assessee and quashed the penalty order u/s.272A(2)(e) of the Act, the grounds on merits that there is 'reasonable cause' u/s.273B of the Act for not filing the return of income on time and hence, penalty u/s.272A(2)(e) of the Act need to be deleted is not adjudicated and is left open.

13. In the result, the appeal filed by the assessee is partly-allowed.

Order pronounced in the open court on 29th January, 2026 at Chennai.

Sd/-	*Sd/-*
(एस.आर. रघुनाथा)	(जॉर्ज जॉर्ज के)
(S.R. RAGHUNATHA)	**(GEORGE GEORGE K)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 29th January, 2026

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.