

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA No. 7499/Mum/2025
Assessment Year : 2015-16

Maa Rupadevi Nagari Sahakari Path Sanstha Maryadit, Pathebahadur Chawl, Tekdi Road No.33, Roopadevi, Wagle Estate, Thane (West), Maharashtra-400606. PAN : AACTM2530R	vs.	Income Tax Officer, Ward-1(1), Thane.
(Appellant)		(Respondent)

For Assessee :	Shri Satish Kadam
For Revenue :	Shri Annavarani Kosuri

Date of Hearing :	28-01-2026
Date of Pronouncement :	03-02-2026

ORDER

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’], dated 17-10-2025, pertaining to Assessment Year (AY) 2015-16, sustaining the levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (‘the Act’).

2. Briefly the facts of the case are that the assessment in this case was completed u/s. 147 r.w.s. 144 of the Act, vide order dt. 13-03-2024, wherein an amount of Rs. 60,07,700/- was brought to tax u/s. 69A of the Act for the reason that the assessee has failed to explain the source of money deposited into its bank account. Separately, penalty proceedings u/s. 271(1)(c) of the Act were also initiated vide show cause notice dt. 13-03-2024.

3. In response to show cause, the assessee submitted that all the collections are made in cash from its Members and all the details were submitted during the assessment proceedings, including cash flow statement and no addition was made by the AO and the assessment was completed with the NIL tax liability and it was accordingly submitted to drop the penalty proceedings.

4. The submissions so filed by the assessee were not found acceptable to the AO. The AO stated that on perusal of the assessment order, it is seen that the income has been assessed at Rs. 60,07,700/-, invoking the provisions of section 69A of the Act and at the same time, there is a mistake in calculation of tax and, therefore, merely the fact that there is a mistake in calculation of tax, it cannot be held that the penalty u/s. 271(1)(c) of the Act cannot be levied. It was further noted by the AO that the assessee has not filed any appeal before the Ld.CIT(A) against the quantum addition in the assessment order and same shows that the assessee has nothing to say in its defense and has agreed to the addition. He accordingly stated that it is a fit case to levy penalty u/s. 271(1)(c) of the Act for concealment of income and penalty of Rs. 18,56,379/- was levied @ 100% of tax sought to be evaded.

5. The assessee thereafter carried the matter in appeal before the Ld. CIT(A) and it was submitted that the assessee is a Co-operative Society that collect deposits from its Members under various schemes and after meeting necessary expenses and repayment, the balance amount is deposited in the bank and the Books of Account are subject to annual statutory audit under the Maharashtra Co-operative Societies Act and cash flow statement and other details were submitted. It was further submitted that the assessee has submitted comprehensive cash flow statements, Cash Book for the whole financial year containing 501 pages, audited Profit & Loss Account and Balance Sheet and three sample pass books. It was further submitted that the assessee has filed the said documentation before the AO and he has not considered the same and has levied the penalty.

6. The submissions so filed by the assessee were considered, but not found acceptable to the Ld.CIT(A). As per the Ld.CIT(A), there is no explanation offered by the assessee as to why the quantum order was passed *ex-parte* and the assessee has sought to respond to the proceedings as per its choice and it was further held by the Ld.CIT(A) that though penalty u/s. 271(1)(c) of the Act are more commonly associated with filed returns of income at the same time, they can also apply in cases of non-filing where the AO establishes concealment of income or furnishing of inaccurate particulars of income and accordingly penalty u/s. 271(1)(c) of the Act levied by the AO was held to be valid. Against the said findings and order, the assessee is in appeal before us.

7. During the course of hearing, the Ld.AR reiterated the submissions made before the Ld.CIT(A). It was submitted that the Ld.CIT(A) has failed to appreciate the fundamental legal position that the penalty u/s. 271(1)(c)

of the Act cannot survive in the absence of “tax sought to be evaded” as so defined in section 271(1)(c) and our reference was drawn to the computation of income which form part of assessment order where NIL tax liability has been determined by the AO. It was further submitted that the assessee submitted comprehensive documentation in terms of cash flow statement, cash book for the whole financial year, containing 501 pages, audited financial statement as well as the Passbook Book extracts, which the authorities have completely disregarded and it was submitted that the said documentation clearly substantiated the cash deposit of Rs. 60,07,700/- were from the Co-operative business collection from the Members of the society. It was further submitted that the assessee has sought for video conferencing vide letter submitted on 10-04-2025, however, no personal hearing was granted and the impugned order has been passed confirming the levy of penalty. It was accordingly submitted that cash deposits were from Members of the assessee society and the assessee has submitted necessary documentation and the assessment was completed determining NIL tax demand and as a result, the assessee has not filed any appeal against the assessment order as tax liability was determined at NIL. As far as levy of penalty is concerned, the assessee still wishes to rely on the documentation so filed. Accordingly it was submitted that the assessee be granted necessary relief in this regard and the penalty so levied be directed to be deleted.

8. Per contra, the Ld.DR is heard, who has relied on the findings of the lower authorities. As far as the first contention of the assessee that no tax liability has been determined in terms of computation forming part of assessment order, it was submitted that in the penalty proceedings, the AO has clearly stated that though the addition u/s. 69A of the Act has been made while passing the assessment order and the assessed income

has been determined at Rs. 60,07,700/- and however, while computing the tax liability, there is a mistake which has crept in the computation of income. It was accordingly submitted that it is merely a case of mathematical/arithmetical error in computation of tax liability determined electronically and the AO must have passed a rectification order by now and on the addition so made, the tax liability has been determined and hence, it is a fit case for levy of penalty as tax has been sought to be evaded equivalent to tax liability so determined by the AO. It was accordingly submitted that the first contention of the Ld.AR, therefore, cannot be accepted.

9. As far as the contention on merits of the addition, it was submitted that since the quantum proceedings have attained finality in view of the fact that the assessee has not filed any appeal, the AO has proceeded and passed the penalty order. At the same time, it was fairly submitted that the contention raised by the assessee that cash so deposited is out of collection from its members and related documentation has been placed on record, there is no finding by the AO or by the Id CIT(A), the matter may accordingly be set-aside.

10. We have heard the rival contentions and perused the material available on record. It is noted that an addition of Rs 60,07,700/- u/s. 69A of the Act has been made while passing the assessment order and the assessed income has been determined at Rs. 60,07,700/-, however, while computing the tax liability, no tax liability has been determined in the computation sheet attached with the assessment order which is clearly a mistake which has crept in the computation of tax liability and it is therefore not a case where no tax liability has been determined by the AO while passing the assessment order and therefore, as far as first

contention so raised on behalf of the assessee that in absence of tax so sought to be evaded, no penalty liability arise in hands of the assessee cannot be accepted.

11. Further, it is a settled legal proposition that the quantum and penalty proceedings are separate and independent proceedings and even though the assessee has not filed any appeal against the addition in the quantum proceedings, the assessee can still come forward with the necessary explanation in support of its claim for non-levy of penalty which can be examined during the course of penalty proceedings. In the instant case, we find that the assessee has been consistent in its explanation that the cash deposits are from its members and necessary documentation in support thereof has been placed on record. We, however, find that neither the AO nor the Ld. CIT(A) have recorded any specific finding in this regard. We, therefore, deem it appropriate to set aside the matter to the file of the Assessing officer to examine the explanation so furnished by the assessee along with the supporting documentation and decide the matter relating to levy of penalty u/s 271(1)(c) afresh as per law, after providing reasonable opportunity to the assessee.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 03-02-2026

Sd/-

[MS. KAVITHA RAJAGOPAL]

JUDICIAL MEMBER

Mumbai, Dated: 03-02-2026

TNMM

Sd/-

[VIKRAM SINGH YADAV]

ACCOUNTANT MEMBER

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai