

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

IT(SS)A No.6106/MUM/2025

Pankaj M Patel Legal Heir of Mohanlal M. Patel,

53, Anand Bhavan, Banganga Road,

Walkeshwar,

Mumbai- 400006

PAN: AABPP3812A

..... Appellant

v/s

Commissioner of Income Tax (Appeals)-51,

Room No.631, Aaykar Bhavan,

Maharishi Karve Road,

Mumbai-400020

..... Respondent

Assessee by : Shri Vimal Punmiya

Revenue by : Shri Virabhadra Mahajan, Sr. DR

Date of Hearing – 09/02/2026

Date of Order - 13/02/2026

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The legal heir of the assessee has filed the present appeal against the impugned order dated 04.08.2025, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)-51, Mumbai, [*"learned CIT(A)"*], which in turn arose from the penalty order passed under section 158BFA(2) of the Income Tax, for the block period from 01.04.1996 to 11.04.2002.

2. In this appeal, the assessee has raised the following grounds: -

"1. On the facts of the appellant's case and under the law, the Commissioner of Income Tax (Appeals) [CIT(A)] erred in passing the impugned order in the name of the deceased assessee and further the impugned order is bad in law in view of various judgements of the court.

2. The Ld. CIT(A) erred in confirming the penalty order passed by the Ld. AO of Rs.5,13,970/- u/s 158BFA(2) of the Income Tax Act, 1961.

3. The Ld. CIT(A) erred in confirming the penalty order passed by the Ld. AO wherein the Ld. AO has treated the business of draft discounting carried on by the nephew of assessee as the business of assessee."

3. Ground No. 1 raised in assessee's appeal was not pressed during the hearing. Accordingly, the same is dismissed as not pressed.

4. Ground Nos. 2 and 3, raised in the assessee's appeal, pertain to the levy of penalty under section 158BFA(2) of the Act.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: A search action under section 132 of the Act was carried out on 11.04.2002 in the case of Patel Group, in which the assessee is one of the members. During the search action, it was found that the assessee was carrying on business from 51-Bibijan Street, 1st Floor, Mumbai-03, and, apart from his normal business of tools and nuts, the assessee was also engaged in the business of draft discounting. It was found during the search and post-search investigation proceedings that the assessee did not have any books of account for himself or his family members' concern.

6. During the assessment proceedings, the assessee claimed that he was only engaged in running a nut and bolt business and that his nephew was carrying on his business activities from the assessee's business premises, i.e., 51-Bibijan Street, 1st Floor, Mumbai-03. It was claimed that the nephew

was engaged in the business of draft discounting and had a bank account in the name of a proprietary concern through which the draft discounting business was carried out. The assessee's nephew died in the year 2006, and no evidence was produced by the assessee to prove that the business belonged to the nephew. Since all the materials gathered during the search and seizure proceedings and the circumstantial evidence available indicated that the assessee's nephew was a benami person of the assessee, the Assessing Officer ("AO") treated the draft discounting business as a benami business of the assessee.

7. During the search and seizure action, a diary was seized, and as per the details in the diary, it was found that the total credit entries for the block period were to the tune of Rs. 105.49 crore. On verification, the entries recorded in the seized diary were also found recorded in the bank accounts. Vide assessment order, the AO applying a gross profit rate of 1% to the total credit entries of Rs. 105.49 crore, held that the assessee had earned commission income of Rs. 1,05,49,370/-. After reducing expenses on account of bank interest and bank charges, as well as expenses such as salary, conveyance, telephone, etc., an addition of Rs. 91,10,788/- was made in the hands of the assessee.

8. In further appellate proceedings, the learned CIT(A) granted partial relief to the assessee and directed the AO to consider gross commission @ 0.25% of the total amount credited in the bank account of Rs. 105.49 crore in place of 1% adopted by the AO. In an appeal before the Tribunal in quantum proceedings, the Coordinate Bench of the Tribunal, vide order

dated 28.09.2012, passed in IT(SS)A No. 53/Mum/2011, directed the AO to adopt the gross commission at 0.2137% of the amount credited in the bank account. Thus, the total commission held taxable in the hands of the assessee was computed at Rs. 22,54,400/- as against Rs. 1,05,49,370/- adopted by the AO, prior to the grant of deduction of expenses.

9. In the meanwhile, a show-cause notice under section 158BFA(1) was issued to the assessee for initiating penalty proceedings. After considering the submissions of the assessee, the AO, vide order dated 13.03.2013 passed under section 158BFA(2) of the Act, levied a penalty of Rs. 5,13,970/-.

10. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the penalty levied by the AO under section 158BFA(2) of the Act. Being aggrieved, the assessee is in appeal before us.

11. We have considered the submissions of both sides and perused the material available on record. From the perusal of the record, it is evident that the AO in the quantum proceedings made the addition on account of commission income earned by the assessee from draft discounting business @ 1%, which was ultimately reduced to 0.2137% by the Coordinate Bench of the Tribunal, after considering the details filed by the assessee on the rate of commission from the assessment years 2005-06 to 2008-09. Thus, from the record, it is evident that even though a sum of Rs. 105.49 crore was found credited in the bank account, the entire addition was made solely on

the estimation of the gross commission income earned by the assessee from the said business.

12. We find that the Coordinate Bench of the Tribunal in Bagga Distillery Hyderabad Pvt. Ltd. v. DCIT, in IT(SS)A No. 28/HYD/2011, vide order dated 14.03.2022, held that where the undisclosed income has been determined purely on an estimated basis, no penalty can be imposed under section 158BFA(2) of the Act. The relevant findings of the Coordinate Bench, in the aforesaid decision, are reproduced follows: -

"9. A reading of section 158BFA(2) makes it clear that imposition of penalty under this provision is not mandatory in each and every case where undisclosed income has been determined. This provision allows the assessing officer to use his discretion either to impose or not impose penalty after taking into consideration the explanation offered by the assessee. Determination of undisclosed income will not automatically result in imposition of penalty under section 158BFA (2) of the Act. The Hon'ble Rajasthan High Court in the case of CIT Vs. Satyendrakumar Dosi (315 ITR 172) and Hon'ble Bombay High Court in the case of CIT vs. Dodsai Limited (312 ITR 112) (Bom) have also decided the law as such. Therefore, considering the fact that the undisclosed income has been determined purely on estimate basis and keeping in mind the order passed by the Jaipur Bench of ITAT, and the law laid down by the Bombay High Court and Rajasthan High Courts discussed above, we are of the considered opinion that no penalty can be imposed under section 158BFA(2) of the Income-tax Act, 1961 against the appellant. In view of the above, we delete the penalty imposed and allow the claim of the assessee."

13. We find that the decision of the Coordinate Bench was upheld by the Hon'ble High Court of Andhra Pradesh and Telangana in CIT vs. Bagga Distilleries Hyderabad (P.) Ltd., reported in [2020] 113 taxmann.com 602 (AP & T), and the appeal filed by the Revenue against the aforesaid decision of the Tribunal was dismissed. We find that the Coordinate Bench of the Tribunal reached similar findings in Smt. Bitoli Devi vs. ACIT, reported in [2009] 31 SOT 30 (Lucknow) (URO).

14. Thus, respectfully following the aforesaid decisions, we are of the considered view that a penalty under section 158BFA(2) of the Act cannot be levied merely on the basis of an estimated addition. Accordingly, we direct the AO to delete the same. As a result, Grounds Nos. 2 and 3 raised in the assessee's appeal are allowed.

15. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 13/02/2026

Sd/-
VIKRAM SINGH YADAV
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 13/02/2026

Prabhat

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.