

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

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
4212/Mum/2025	2003-04	PBA Infrastructure Limited, 611/3, Prakash, V.N. Purav Marg, Chembur, Mumbai-400071 [PAN: AAACP7564K]	DCIT, Central Circle-5(1), Aayakar Bhavan, Churchgate, Mumbai-400020.
4211/Mum/2025	2013-14		

For Assessee :	Shri Nishit Gandhi <i>a/w.</i> Ms. Angel More
For Revenue :	Shri R.A. Dhyani, CIT-DR <i>a/w.</i> Shri Virabhadra Mahajan, Sr.DR

Date of Hearing :	10-02-2026
Date of Pronouncement :	13-02-2026

ORDER

PER VIKRAM SINGH YADAV, A.M :

These are two appeals filed by the assessee against the respective orders of the Learned Commissioner of Income Tax (Appeals)-53, Mumbai [‘Ld.CIT(A)’], dated 18-03-2025, pertaining to Assessment Years (AYs.) 2003-04 & 2013-14, sustaining levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (‘the Act’).

2. At the outset, it is noted that there is a delay in filing these appeals as pointed out by the Registry. After hearing both the parties and perusing the facts placed on record, we find that there was reasonable cause for the

delay in filing the present appeals and hence, the delay is hereby condoned and both the appeals are admitted for adjudication.

3. During the course of hearing, the Ld.AR submitted that in both these cases, the assessment was completed and the tax payable by the assessee was computed in terms of section 115JB of the Act which was more than the tax payable in terms of the normal provisions of the Act and in this regard, our reference was drawn to the assessment order passed u/s. 143(3) r.w.s. 153A of the Act, dt. 31-12-2009 passed for the AY. 2003-04 and assessment order u/s. 143(3) of the Act, dt. 19-02-2016 passed for the AY. 2013-14. It was submitted that in view of the same, any addition or disallowance made under the normal provisions of the Act will not have any effect on the computation of minimum alternate tax and as a result, there is no tax sought to be evaded. It was submitted that in such a case, no penalty could be levied in the hands of the assessee and the matter is covered by the decision of the Hon'ble Supreme Court in the case of CIT vs. Nalwa Sons Investment Ltd. [2012] 21 taxmann.com 184 (SC) and is also recognized by the Central Board of Direct Taxes [CBDT] in its Circular dt. 31-12-2015, wherein the Board has directed that no appeals may be filed on this ground and the appeal already filed before various Courts/Tribunals may be withdrawn/not pressed upon and the contents of the Circular read as under:

"Subject: Penalty u/s 271(1)(c) wherein additions/disallowances made under normal provisions of the Income Tax Act, 1961 but tax levied under MAT provisions u/s 115JB/115JC, for cases prior to A.Y. 2016-17-reg.-

Section 115JB of the Act is a special provision for levy of Minimum Alternate Tax on Companies, inserted by Finance Act 2000 with effect from 1-4-2001.

2. Under clause (iii) of sub-section (1) of section 271 of the Act, penalty for concealment of income or furnishing inaccurate particulars of income is determined based on the "amount of tax sought to be evaded" which has been defined inter-alia, as the difference between the tax due on the income assessed and the tax which would have been chargeable had such total

income been reduced by the amount of concealed income or income in respect of which inaccurate particulars had been filed

3. In this context, Hon'ble Delhi High Court in its judgment dated 26.8.2010 in ITA No. 1420 of 2009 in the case of Nalwa Sons Investment Ltd. (available in NJRS as 2010-LL-0826-2), held that when the tax payable on income computed under normal procedure is less than the tax payable under the deeming provisions of Section 115JB of the Act, then penalty under section 271(1)(c) of the Act could not be imposed with reference to additions/disallowances made under normal provisions. The judgment has attained finality.

4. Subsequently, the provisions of Explanation 4 to sub-section (1) of section 271 of the Act have been substituted by Finance Act, 2015, which provide for the method of calculating the amount of tax sought to be evaded for situations even where the income determined under the general provisions is less than the income declared for the purpose of MAT u/s 115JB of the Act. The substituted Explanation 4 is applicable prospectively w.e.f. 01.04.2016.

5. Accordingly, in view of the Delhi High Court judgment and substitution of Explanation 4 of section 271 of the Act with prospective effect, it is now a settled position that prior to 1/4/2016, where the income tax payable on the total income as computed under the normal provisions of the Act is less than the tax payable on the book profits u/s 115JB of the Act, then penalty under 271(1)(c) of the Act, is not attracted with reference to additions/disallowances made under normal provisions. It is further clarified that in cases prior to 1.4.2016, if any adjustment is made in the income computed for the purpose of MAT, then the levy of penalty u/s 271(1)(c) of the Act, will depend on the nature of adjustment.

6. The above settled position is to be followed in respect of section 115JC of the Act also.

7. Accordingly, the Board hereby directs that no appeals may henceforth be filed on this ground and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon. This may be brought to the notice of all concerned.”

4. The Ld. DR has been heard, who has relied on the orders passed by the lower authorities and at the same time, the Ld. DR failed to controvert the contents of the Circular issued by the CBDT, dt. 31-12-2015, which has a bearing on the matter under consideration for the impugned assessment years.

5. We have heard the rival contentions and perused the material available on record. It is an admitted position that in both the cases, the penalty has been levied in respect of additions/disallowances made under the normal provisions of section, whereas the tax liability has been finally determined in terms of section 115JB of the Act. In the light of the decision of the Hon'ble Delhi High Court in the case of Nalwa Sons and which has also been accepted by the CBDT, the penalty so levied by the AO u/s. 271(1)(c) of the Act amounting to Rs. 4,59,353/- for the AY. 2003-04 and Rs. 20,69,314/- for the AY. 2013-14 is hereby directed to be deleted.

6. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 13-02-2026

Sd/-
[SANDEEP SINGH KARHAIL]
JUDICIAL MEMBER

Sd/-
[VIKRAM SINGH YADAV]
ACCOUNTANT MEMBER

Mumbai, Dated: 13-02-2026
TNMM

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