IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No. 1523/Bang/2025
Assessment Year : 2015-16

The Income Tax Officer, Ward – 1, Bellary.	**Vs.**	M/s. Bellary Urban Development Authority, Chairman City Improvement Board, BUDA Complex, Near Mothi Circle, Bellary – 583 101. **PAN: AAALB0037A**
APPELLANT		**RESPONDENT**

Assessee by	**:**	Shri Ajith V, Advocate
Revenue by	**:**	Shri Balusamy .N, JCIT-DR

Date of Hearing	**:**	13-11-2025
Date of Pronouncement	**:**	09-02-2026

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the revenue challenging the order of the NFAC, Delhi dated 16/05/2025 in respect of the A.Y. 2015-16 in which the penalty levied u/s. 271(1)(c) was deleted by the NFAC, Delhi and raised the following grounds:

> *"1. The order of the learned CIT(Appeal) is opposed to law and facts of the case.*

2. Whether on the facts and in the circumstances of the case and in law the learned CIT(Appeal) was correct in deleting the penalty u/s 271(1)(c) by not considering the fact that return of income is not filed voluntarily u/s 139(1) of I.T. Act, 1961 but filed in response to Notice Ws 148 of I.T Act, 1961.

3. Whether on the facts and in the circumstances of the case and in law the learned CIT(Appeal) was correct in deleting the penalty u/s 271(1)(c) on that part of assessed income representing returned income by not considering the fact that return of income is not filed voluntarily w/s 139(1) of I.T act but filed in response to Notice ids 148 of I.T act.

4. Whether on the facts and in the circumstances of the case and in law the learned CIT(Appeal) was correct in deleting the penalty u/s 271(1)(c) on the basis that income of the assessee is exempt u/s 10(46) of the Act as per CBDT Notification No.1/02024 dated:02/01/2024 the said notification is not applicable for assessment year under consideration.

5. Whether on the facts and in the circumstances of the case and in law the learned CIT(Appeal) was correct in deleting the penalty u/s 271(1)(c) by ignoring the fact that the assessee had concealed particulars of income in respect of addition of Rs. 26,95,117/-

6. Any other ground that may he raised subsequently ..”

2. The brief facts of the case are that the assessee is a local authority created under the Karnataka Urban Development Act, 1987. As per the said Act, the assessee is authorised to grant approval for residential / other layouts developed by the real estate developers and also purchasing lands and formed layouts for the sale. The assessee had received approval fees for layouts and also for granting the approval for the construction from the public. The assessee was under the impression that their income was eligible for exemption under the provisions of the Income Tax Act since they are doing the statutory duties of developing the Bellary city. The AO based on the information available in the system and the NMS Data found that the assessee had not filed their return of income in spite of the fact that their income exceeds the threshold limit. Thereafter the AO had issued a notice

u/s. 148 and the assessee also filed their return of income on 31/12/2018. The assessee had declared the income from house property, business income and interest on FDS and other deposits under the income from other sources. Thereafter the case was selected for manual scrutiny and notice u/s. 143(2) was issued. Subsequently, notices u/s. 142(1) were issued along with the questionnaire. The assessee filed the required documents along with the computation of statement of total income. Several other documents were also filed by the assessee. The AO considered the various documents filed by the assessee and was of the view that the amount debited under the head development works would be capital in nature and therefore issued a further notice u/s. 142(1) seeking the response from the assessee why the said amount should not be disallowed as the same appears to be in capital nature. The assessee filed their reply on 06/12/2019 and explained that the expenditure debited relates to the development of public parks which were handed over to the CMC and therefore it could be revenue in nature. The assessee also submitted that the fixed security deposits collected from the contractors and refunded to them after the completion of the work are inadvertently included in the above said expenditure and filed a statement that the net revenue expenditure would be Rs. 85,66,318/- as against the expenditure amount debited Rs. 1,12,61,505/-. The AO accepted the said explanations and subjected the fixed security deposits to tax since the same is in the nature of capital expenditure. The assessment has been completed accordingly.

3. Thereafter the AO had issued a notice u/s. 271(1)(c) of the Act r.w.s. 274 of the Act on the allegation that the assessee had concealed the particulars of its income. The AO had confirmed the penalty at 100% since the assessee had concealed the particulars of its income. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and contended that the assessee is a local authority performing the statutory duties and there was no attempt to conceal the particulars of its income since the assessee was under the impression that their income is exempt from tax

u/s. 10(46) of the Act. The assessee also raised an alternate ground that the income declared in the return filed pursuant to the notice issued u/s. 148 could not be treated as the concealment of income. The Ld.CIT(A) after considering the background of the case as well as the submissions made by the assessee and also relying on the case laws relied on by the assessee had deleted the penalty.

4. As against the said order, the present appeal has been filed by the revenue before this Tribunal.

5. At the time of hearing, the Ld.DR relied on the grounds raised by the revenue and submitted that the assessee had not filed their return of income voluntarily u/s. 139(1) of the Act and therefore the AO had rightly levied the penalty u/s. 271(1)(c) of the Act. The Ld.DR further submitted that the reliance made by the assessee on the CBDT Notification No. 01/2024 dated 02/01/2024 does not apply to the assessee since the said notification was issued much later to the assessment year under dispute. The Ld.DR therefore submitted that the assessee had concealed the particulars of the income and therefore the AO had correctly levied penalty u/s. 271(1)(c) of the Act and prayed to restore the penalty. The Ld.DR also filed a report and submitted that the assessee had not challenged the assessment order and therefore the penalty has to be levied u/s. 271(1)(c) of the Act.

6. The Ld.AR submitted that the assessee is a statutory body created under the Karnataka Urban Development Act, 1987 for the development of the Bellary city. The Ld.AR further submitted that the assessee was under the impression that the income was earned by the assessee for doing the urban development activities and therefore it could not be taxed under the provisions of the Act. The Ld.AR further submitted that the assessee had declared the entire income but wrongly debited the security deposits collected from the contractors and refunded after the completion of the

development works as revenue in nature, but the said mistake was rectified immediately and voluntarily by filing a statement in which the assessee had agreed for treating the security deposits as capital in nature. The Ld.AR further submitted that the AO had not made any addition on the returned income and therefore prayed to take a lenient view since the levy is against the penalty u/s. 271(1)(c) of the Act. The Ld.AR relied on the judgment of the Hon'ble Supreme Court reported in 83 ITR 26 in the case of Hindustan Steel Ltd. vs. State of Orissa and prayed to dismiss the appeal filed by the revenue.

7. We have heard the arguments of both sides and perused the materials available on record.

8. The only dispute involved in this appeal is that whether the penalty could be imposed u/s. 271(1)(c) of the Act in the given facts and circumstances of the case or not. We have gone through the facts involved in the present appeal. The assessee is a public authority doing the statutory duties granted under the provisions of the Karnataka Urban Development Act, 1987. The duty of the assessee is to regulate the development of the city of Bellary by approving the buildings, layouts, etc. If the assessee had not given such powers, then the development of the city would be at stake and indiscriminate violations would be committed by the public which would affect the society at large. To regulate these activities only, the assessee was created by the Government of Karnataka and as seen from the activities carried out by the assessee, it is in the nature of doing the charitable activities. In this background, we have to decide whether the assessee had committed any violation in not filing the original return of income u/s. 139(1) of the Act in order to attract the penal provisions u/s. 271(1)(c) of the Act. We have also perused the assessment order in which the AO had accepted the returned income filed pursuant to the notice issued u/s. 148. Even though the assessee had claimed the expenditure by deducting a sum of Rs. 1,12,61,505/- as the revenue expenditure, the

assessee voluntarily restricted its claim to Rs. 85,66,388/- and treated the security deposits received from the contractors as capital in nature. The AO after going through the various documents and records furnished by the assessee to the various notices issued by the AO, had passed the assessment order.

9. We have also perused the provision 271(1)(c) of the Act which authorises the AO to impose penalty for the concealment of the particulars of its income or furnish inaccurate particulars of such income. The situation warranted for imposing penalty u/s. 271(1)(c) of the Act is that the assessee should have concealed the particulars of its income or furnish inaccurate particulars of income. In the present case, the AO had not found out any of the incomes concealed by the assessee but issued notice u/s. 148 on the reason that the assessee had not submitted their return u/s. 139(1) of the Act. The assessee was under the impression that since they are doing the statutory duties and earned income out of the said Statutory duties, their incomes are exempt from the levy of tax and therefore under the bonafide impression, they have not filed the return of income. Immediately on receipt of the notice u/s. 148 of the Act, the assessee voluntarily declared their income and also produced several documents in support of the return filed by them. The AO also considered the various documents filed by the assessee and accepted that the returned income is correct. The AO on the doubt that the expenditure debited under the head development works are capital in nature and on that basis, sought for the details and the assessee after knowing that the fixed security deposits collected from the contractors and refunded to them are capital in nature, voluntarily filed a statement showing the break-up of the expenditure debited in the development works account. The AO had also considered the said details filed by the assessee and accepted that the fixed security deposits are to be taxed as capital in nature. In such circumstances, the AO had imposed penalty u/s. 271(1)(c) of the Act as if the assessee had concealed the particulars of income or furnished inaccurate particulars of income. In the present case, the

assessee had not concealed any particulars of income and in fact the assessee had voluntarily and correctly declared the income and produced several documents to show that the income declared by the assessee is in order. It is not the case of the revenue that the assessee had concealed the income which was found out by the department based on some other materials to impose penalty u/s. 271(1)(c) of the Act. As stated earlier, the notice u/s. 148 was issued by the AO for the reason that the assessee had not filed their return of income u/s. 139(1) of the Act and not issued based on the discovery of some incomes which were concealed by the assessee. We are of the view that the word "concealed" denotes that the income should be found out by the authorities based on some incriminating materials but in the present case, there is no such averment that the income has escaped from the levy of tax. Further, the provision 271(1)(c) of the Statute had granted discretion to the authorities to impose penalty and therefore the legislature had used the word "may direct that such person shall pay by way of penalty". Therefore it is not automatic that penalty should be imposed u/s. 271(1)(c) of the Act when the facts establishes that there is some bonafide reasons and the act of the assessee could not be termed as mischief warranting to impose penalty. Further, the assessee is also a public body and executed the various statutory duties and therefore by concealing the particulars of income, the assessee would not get any benefit. In the present case, the assessee had explained that under the wrong impression that they had not filed the return of income u/s. 139(1) of the Act, and on being informed that the assessee has to file the return of income, immediately, the assessee had voluntarily declared all the incomes in their return of income filed pursuant to the notice issued u/s. 148 of the Act. Having considered all the material facts, the Ld.CIT(A) has given a finding as follows:

> *"6.2 I have perused the penalty order, grounds of appeal and submission filed by the appellant carefully. During the course of appellate proceedings, the appellant had requested for personal hearing through VC. Accordingly VC was fixed on 02/05/2025 at 2.30 PM but the appellant did attend the VC. Therefore, the grounds raised by the*

appelllant are decided on the basis of submissions filed. I find that the appellant had not filed return of income u/s 139(1) and the appellant has filed the return of income after issue of notice u/s 148 of the Act declaring total income of Rs.2,04,15,360/- by paying due taxes by way of self assessment. Regarding the addition of Rs.26,95,117/- made during assessment proceedings on account of disallowance of expenses, the appellant had admitted the same saying that it was an inadvertent error to treat the capital expenditure as revenue expenditure. The appellant relying on various decisions, contended that return filed in response to 148 notice may be treated as return filed u/s 139(1) and further the appellant submitted that the appellant was under bonafide belief that its income is exempt u/s 10(46) of the Act and submitted that as per CBDT Notification No.01/2024 dated 02/01/2024, the income of the appellant is exempt. Regarding, the inadvertent error, the appellant by relying on the decision of Hon'ble Supreme Court of India in the case of Reliance Petro products Pvt Ltd and Price Water Coopers P Ltd, submitted that concealment penalty on the addition made by, the AO due inadvertent error is not leviable. Considering the submission filed by the appellant and considering the case laws relied upon by the appellant, the penalty imposed by the AO is hereby deleted and grounds of appeal raised by the appellant are allowed."

10. We have perused the said finding of the Ld.CIT(A) and we are in total agreement that the view taken by the Ld.CIT(A) which was made by relying on the judgments of the Hon'ble Supreme Court. The revenue had not brought any fresh facts which was not considered by the Ld.CIT(A) for restoring the penalty except the allegation that the assessee had not filed their return of income u/s. 139(1) of the Act and therefore the penalty should be levied u/s. 271(1)(c) of the Act. The notification issued by the CBDT may also be taken as an explanatory one and therefore it could be applied even though the same was issued later. We do not find any merit in the said contention since the assessee had not concealed the particulars of income and in fact the assessee had declared the income by filing a return voluntarily. Further, the AO had also not disputed the income declared by the assessee except a small disallowance in respect of the fixed security deposits received from the contractors which was also explained by the

assessee that by mistake, the said amount was included in the revenue expenditure and offered to tax under the provisions of the Income Tax Act.

11. We have also perused the judgment of the Hon'ble Supreme Court cited supra and in the said judgment, the Constitutional Bench of the Hon'ble Supreme Court had laid down the general principles for imposing penalties. The relevant finding of the Hon'ble Supreme Court is extracted as below:

> *"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."*

12. In the above said judgment, the Hon'ble Supreme Court had deprecated the imposition of penalty when there is a failure to perform a statutory application since it is a matter of discretion of the authority to be exercised judiciously and on a consideration of all the relevant circumstances. The Hon'ble Supreme Court further held that the authority can refuse to impose penalty when there is a breach flows from a bonafide belief. The facts as stated in the present case are also similar to the facts considered by the Hon'ble Supreme Court.

13. We find that the dispute is not with regard to the liability to pay any tax but only with regard to the payment of penalty on technical grounds. We do not find that the order imposing penalty could be sustained based on

the general principles laid down by the Hon'ble Supreme Court for levying penalties. We, therefore not inclined to entertain the appeal filed by the revenue to restore the penalty levied u/s. 271(1)(c) of the Act.

14. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 09th February, 2026.

Sd/-	Sd/-
(LAXMI PRASAD SAHU)	(SOUNDARARAJAN K.)
Accountant Member	Judicial Member

Bangalore,
Dated, the 09th February, 2026.
/MS /

Copy to:

1. Appellant	2. Respondent
3. CIT	4. DR, ITAT, Bangalore
5. Guard file	6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore