अपीलीय अधिकरण, **'बी'** न्यायपीठ**,** चेन्नई। **IN THE INCOME TAX APPELLATE TRIBUNAL** **'B' BENCH: CHENNAI** **श्री एबी टी. वर्की, न्यायिक सदस्य एवं** श्री **एस. आर. रघुनाथा,** लेखा सदस्य **के समक्ष** **BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND** **SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**
आयकर अपील सं./**ITA No.2858/Chny/2025** निर्धारण वर्ष**/Assessment Year: 2017-18**

Uma Maheswari, Flat 2A, Block V, Rani Meyammal Towers, MRC Nagar, Raja Annamalai Puram, Chennai-600 028. [**PAN: ABAPU 2280 R**]	**v.**	The ACIT, NCC-7(1), Chennai.
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
अपीलार्थी की ओर से/ Appellant by	:	Mr.D. Anand, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Mr.K. Iliayaraja, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	18.12.2025 & 13.02.2026
घोषणाकीतारीख /Date of Pronouncement	:	18.02.2026

आदेश **/ O R D E R**

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter referred to as "the Ld.CIT(A)"), Delhi, dated 03.09.2025 for the Assessment Year (hereinafter referred to as "AY") 2017-18 against the penalty levied by the AO u/s.271AAC(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The brief facts of the case are that the assessee didn't file her return of income (RoI) for AY 2017-18 within time-limit specified u/s.139(1) of the Act. Subsequently, the AO noted that the assessee opted for Income Disclosure Scheme (IDS) and declared an amount of ₹2,18,23,000/-; but, didn't pay the taxes, which was offered to pay under IDS. Based on the aforesaid information, the AO reopened the assessment of the assessee by issuing notice u/s.148 of the Act and passed the assessment order u/s.147 r.w.s.144 r.w.s.144B of the Act on 31.03.2022 assessing income of ₹2,18,23,000/- as unexplained expenditure u/s.69A of the Act and applied the provisions of Sec.115BBE of the Act computing tax @60% of the said amount and raised a demand of ₹3,64,13,780/- by passing the assessment order dated 31.03.2022; and thereafter, he issued impugned penalty notice u/s.271AAC(1) of the Act on 31.03.2022 and levied penalty of u/s.271AAC(1) of the Act ₹16,85,826/- being 10% of the tax on 1,68,58,268/- [tax on ₹2,18,23,000/- @60% = ₹1,30,93,800/- **+** SC ₹32,72,450/- **+** Cess of ₹4,91,018] by order dated 26.09.2022.

3. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who noticed that the quantum appeal has been dismissed by him, and finding no explanation from the assessee for non-levy of impugned penalty, dismissed the penalty-appeal of the assessee.

4. Aggrieved, the assessee is in appeal before this Tribunal.

5. We have heard both the parties and perused the material available on record. The assessee inter-alia has challenged the impugned penalty u/s.271AAC(1) of the Act on several fronts by raising grounds on jurisdiction/legal-issue as well as on merits. According to the Ld.AR, Income Tax Authority has failed to appreciate that the jurisdiction to levy penalty under section 271AAC arises only when tax is lawfully payable u/s.115BBE of the Act which constitutes the statutory foundation and triggering mechanism for such penalty. According to the Ld.AR, the Hon'ble jurisdictional High Court in the case of SMILE Microfinance Ltd. v. ACIT order dated 19.11.2024 [WP (MD) No.2078 of 2020 & WMP (MD) No.1742 of 2020], has categorically held that the amended and harsher regime of taxation introduced under section 115BBE is prospective in operation and not applicable for Assessment Year 2017-18. So, income assessed for Assessment Year 2017-18 under sections 68 to 69D cannot be subjected to the amended rigours of section 115BBE, including the enhanced rate of tax and the disallowance of deductions. The Ld.AR drawing our attention to sub-section (1) of Section 271AAC of the Act pointed out that penalty shall be levied at the rate of 10% of the tax payable under clause (i) of Sub-section (1) of section 115BBE of the Act. Thus, according to the Ld.AR, when Section 115BBE of the Act itself can't be validly applied for AY 2017-18, the statutory computation

mechanism for levy of penalty u/s.271AAC of the Act fails. Be that as it may, we are not inclined to answer the legal issue and leave it open, since we note that Tribunal has decided the quantum Appeal of assessee in her favour.

6. As noted supra, we take judicial notice of the order passed by this Tribunal dated 13.02.2026 in assessee's quantum Appeal (ITA No.2033/Chny/2025), wherein assessee assailed the action of AO passing the assessment order on 31.03.2022 u/s.147 r.w.s.144 r.w.s.144B of the Act making addition of ₹2,18,23,000/- as unexplained expenditure u/s.69A of the Act, and the Ld CIT(A) confirming it. And the Tribunal is noted to have deleted the addition and allowed the quantum appeal of assessee by holding inter-alia as under;-

> 7. We also notice that the coordinate bench in the above has admitted the contentions raised for the first time before the Tribunal with regard to service of Form 2 and admitted the same for adjudication on the ground that no new facts need to be examined. In the present case also where the assessee has raised the identical ground and therefore we hold that the additional grounds raised being pure legal issue, not requiring investigation of new facts we admit the additional grounds, by placing reliance on the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC).
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> 8. Now coming to merits of the issues contended, we notice that the identical issue has arisen in assessee's husband's case and the coordinate while considering the same has held that –
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> > *54. Before proceeding to discuss this aspect, we find that the Ld.AR has urged before us that since the Tax / Surcharge / Penalty as contemplated in section 184 / 185 of the FA 2016 have not been paid, by virtue of section 187(3) the declaration is deemed never to have been made and*

that therefore such declaration cannot be admitted in evidence against the assessee. We do not find any force in the argument of the Ld.AR since section 187(3) provides that where the tax / surcharge / penalty in respect of a declaration made u/s.183 is not paid within the specified date, the same shall be deemed never to have been made.

55. Section 192 provides that a declaration cannot be admitted in evidence. Once it is admitted that the declaration is deemed never to have been made, the said Form 1 will constitute material that is admissible in evidence against the declarant, since the said Form 1 is no longer a declaration as contemplated u/s.183 of the FA 2016. Any other view of the matter would render section 197(b) of the Act nugatory and would mean that in no case where the tax / surcharge / penalty are not paid within the date specified under the scheme the amounts shown under the IDS, 2016 can be treated as income chargeable to tax of the previous year in which the declaration is made. We, therefore, hold that the declaration filed in Form 1 and pursuant to which taxes have not been paid can be used and is admissible in evidence against a declarant.

56. Now turning to there being no service of Form 2 given that proof has not been furnished before us, we turn to Rule 4 of the IDS, Rules which reads as follows:

4. (1) A declaration of income or income in the form of investment in any asset under section 183shall be made in Form-1.
(2) The declaration shall be furnished:—(a) electronically under digital signature; or(b) through transmission of data in the form electronically under electronic verification code; or(c) in print form, to the concerned Principal Commissioner or the Commissioner who has the jurisdiction over the declarant.
(3) The Principal Commissioner or the Commissioner shall issue an acknowledgement in Form-2to the declarant within fifteen days from the end of the month in which the declaration under section 183 has been furnished.
(4) The proof of payment of tax, surcharge and penalty made pursuant to the acknowledgement issued by the Principal Commissioner or the Commissioner shall be furnished by the declarant to the such Principal Commissioner or Commissioner in Form 3.
(5) The Principal Commissioner or the Commissioner shall grant a certificate in Form-4 to the declarant within fifteen days of the submission of proof of full and final payment of tax, surcharge along with penalty by the declarant under section 187 of the Act in respect of the income so declared.
(6) The Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems) shall specify the procedures, formats and standards for ensuring secure capture and transmission of data and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to furnishing the form in the manner specified in sub-rule (2).
Explanation.—For the purposes of this rule "electronic verification code" means a code generated for the purpose of electronic verification of the person furnishing the return of income as per the data structure and standards specified by Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems).

57. Rule 4(3) specifically provides that the ld.PCIT / CIT shall issue acknowledgement in Form 2 to the declarant within 15 days from the end of the month in which the declaration u/s.183 is furnished. It is beyond doubt that Rule 4(3) has been complied with in as much as the declaration in the instant case has been made on 30.09.2016 and Form 2 has been issued on 06.10.2016 which is within the time contemplated under Rule 4(3) of the IDS Rules. We however notice that sub rule (4) of Rule 4 of the IDS Rules provides that proof of payment of tax / surcharge / penalty made pursuant to the acknowledgment issued by the ld.PCIT / CIT. The question that therefore needs to be answered is whether it would suffice if

the Form 2 is issued or whether the From 2 has to be served on a declarant for the time to start ticking for the payment of tax / surcharge / penalty and where the non-payment of the same within the time specified in the scheme would render the declaration never to have been made, thereby triggering the application of section 197(b) of the FA 2016.

58. In this connection as already mentioned the intimation of payment u/s.187(1) of the Finance Act 2016 in respect of the IDS, 2016 is to be in Form 3. The relevant portion of the Form 3 reads as follows:

> *To,*
>
> *The Principal Commissioner/Commissioner ……*
>
> *Sir / Madam,*
> *1. Pursuant to the acknowledgement received from you in Form 2 vide Certificate F.No.---------- dated ----------, the detail of payments made are as under:*

59. A plain reading of the Form 3 clearly shows that the payment of the tax / surcharge / penalty are made pursuant to an acknowledgement received by a declarant in Form 2 from the ld.PCIT / CIT. Therefore, it is clear that if an acknowledgement in Form 2 is not received by a declarant the question of filing Form 3 and the payment of tax / surcharge / penalty pursuant to the declaration in Form 1 u/s.183 of the FA 2016 does not and cannot arise. This being so, one will have to conclude that where the Form 2 is not served on the declarant the question of payment of tax / surcharge / penalty as contemplated by Sections 184 & 185 of IDS 2016 does not arise.

60. In the instant case there is no doubt that the Form 2 has been issued. Can in the circumstance there be a presumption that the Form 2 has been served on the assessee. In this connection one may notice the provisions of section 292BB of the Income Tax Act. Section 292BB of the Act specifically provides that where an assessee has appeared in any proceeding or co-operated in any enquiry under the Income Tax Act relating to an assessment or reassessment, such assessee shall be precluded from taking any objection in any proceedings or inquiry under the Income Tax Act that the notice was not served upon him or not served upon him in time or served upon him in an improper manner, unless he has raised such objection before completion of such assessment or reassessment. It can be seen that section 292BB is only applicable to the Income Tax Act and cannot be extended to the Finance Act, 2016. Therefore, the benefit of section 292BB of the Act will not be available while interpreting the service or otherwise of acknowledgement in Form 2 as contemplated by the Finance Act 2016 read with the Rules framed thereunder.

61. Therefore in the absence of any provisions corresponding to section 292BB of the Income Tax Act in the Finance Act 2016, it would lead to the irresistible conclusion that the burden of having served the notice in the present case having not been discharged by the revenue, there can be no valid service and consequently the provisions of section 197(b) cannot be triggered for an addition to be made in the A.Y. relevant to the previous year in which the declaration under IDS was made on the basis of a failure to make payment of tax / surcharge / penalty as contemplated by sections 184 & 185 of the Finance Act 2016

62. Having observed so, we have to necessarily conclude that in the facts and circumstances of the case the Form 2 having not been served on the assessee, section 187(3) and 197(b) have no application. Since section 197(b) has no application, we hold that the addition of a sum of

Rs.14,55,65,400/- u/s.69A of the Act made in the assessment framed u/s.147 r.w.s 144 of the Act could not have been made by invoking the provisions of section 197(b) of the Finance Act 2016.

63. We therefore direct the AO to delete the addition of Rs.14,55,65,400/- as income u/s.69A of the Act by allowing the grounds of appeal raised by the assessee.

64. Though we have decided that the income is not chargeable to tax under the provisions of section 69A of the Income Tax Act, it would not be out of place to mention that even if an addition is made u/s.69A of the Act, the provisions of section 115BBE of the Act for charging higher rates of tax cannot be invoked for the assessment year 2017-18.

7. The ratio laid down by the coordinate bench is that case the when Form 2 is not served on the assessee, then section 187(3) and 197(b) have no application. In the present case also the contention of the assessee is that Form 2 has not been served on the assessee and during the course of hearing no new material has been brought on record by the revenue to controvert the said claim. Further the ld AR raised the alternate plea that the income declared by the assessee in Form 1 pertains to AYs prior to the year under consideration and therefore the AO cannot make the addition towards the same in the year under consideration. In view of these discussions and considering the decision of the coordinate bench on identical facts, we are of the view that the addition made by the AO cannot be sustained. We therefore direct the AO to delete the addition of Rs. 2,18,23,000/- as income u/s.69A of the Act.

8. In result the appeal of the assessee is allowed.

7. Thus, we find that the quantum assessment in the case of assessee has been deleted vide Tribunal order dated 13.02.2026, holding inter-alia that in any case, the impugned addition cannot be legally sustained for AY 2017-18 for the reason given therein. Hence, when the quantum assessment has been deleted (supra) the penalty levied u/s 271AAC of the Act, cannot survive. For doing so, we rely on the legal maxim "*sublato*

Fundmento Credit opus" meaning in case a foundation is removed, the super-structure falls, which principle was recognized by the Hon'ble Supreme Court in the case of 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. Hence the penalty imposed by the AO, confirmed by Ld CIT(A) of ₹16,85,826/- is directed to be deleted.

8. In the result, penalty-appeal filed by the assessee is allowed.

Order pronounced on the 18th day of February, 2026, in Chennai.

Sd/-	**Sd/-**
(एस. आर. रघुनाथा)	**(एबी टी. वर्की)**
(S.R.RAGHUNATHA)	**(ABY T. VARKEY)**
लेखा सदस्य**/ACCOUNTANT MEMBER**	न्यायिक सदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 18th February, 2026.
TLN

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**
1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF