

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 7899/Mum/2025
(Assessment Year: 2014-15)**

M/s. Mumbadevi Veyhicles Shop No. 18, Suyash Shopping Centre, NNP, A. K. Vaidya Marg, Goregaon (E), Mumbai-400 065	Vs.	ITO Ward 41(4)(2), Room No. 854B, 8 th floor, Kautilya Bhavan, BKC, Bandra (East), Mumbai-400 051
PAN/GIR No. AAOFM0851F		
(Applicant)		(Respondent)

Assessee by	Ms. Dinkle Hariya & Ms. Sruti Kalyanikar, Ld. ARs
Revenue by	Shri Annavaram Kosuri, Ld. DR

Date of Hearing	19.02.2026
Date of Pronouncement	24.02.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

This appeal by the assessee is directed against the order dated 19.09.2025 passed under section 250 of the Income-tax Act, 1961 [hereinafter referred to as “the Act”] by the Commissioner of Income-tax (Appeals), National Faceless Appeal

Centre, Delhi [hereinafter referred to as “CIT(A)”], arising out of the penalty order passed under section 271(1)(c) of the Act.

Facts of the Case

2. The assessee is a partnership firm engaged in the business of supply of vanity vans on hire. For Assessment Year 2014–15, the assessee had not filed its return of income under section 139 of the Act within the prescribed time. Based on information available in the system regarding substantial TDS credits and financial transactions reflected in Form 26AS, the Assessing Officer initiated reassessment proceedings. Notice under section 148 of the Act was issued on 30.03.2021 after obtaining approval under section 151 of the Act. In response to the said notice, the assessee filed its return of income on 30.04.2021 declaring total income of Rs. 40,50,371/-.

3. Subsequently, notice under section 143(2) was issued. The proceedings were thereafter transferred to the Faceless Assessment Scheme and notices under section 142(1) were issued calling for details such as nature of business, bank statements, Form 26AS, partnership deed, audit report in Forms 3CB and 3CD and other relevant information.

4. After considering the material placed on record, the assessment was completed under section 143(3) read with section 147 and section 144B of the Act vide order dated 27.03.2022 determining the total income at Rs. 40,50,371/-, being the same

income returned by the assessee in response to notice under section 148.

5. While completing the reassessment, the Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Act for alleged concealment of income / furnishing of inaccurate particulars of income. Separate penalty proceedings under section 271F were also initiated for failure to file return under section 139.

6. Thereafter, penalty under section 271(1)(c) was levied vide order dated 29.09.2022, wherein the Assessing Officer imposed a penalty of Rs. 12,51,564/- holding that the assessee had concealed the particulars of income by not filing the return under section 139 and by offering income only after issuance of notice under section 148.

7. Aggrieved, the assessee preferred an appeal before the learned CIT(A). The learned CIT(A) dismissed the appeal and confirmed the penalty.

8. Aggrieved by the order of CIT(A) the assessee is in appeal before us raising following grounds of appeal:

1. THE ORDER IS BAD IN LAW, ILLEGAL AND WITHOUT JURISDICTION

1.1 In the facts and the circumstances of the case, and in law, the appellate order u/s. 250 of the Income – tax Act, 1961 [‘the Act’] framed and passed on 19.09.2025 by the Commissioner of Income – tax (Appeals), National Faceless Appeal Centre [‘Ld. CIT (A)’] is bad in law, illegal and without jurisdiction, as the same is framed in breach of the

statutory provisions of the Act and the scheme and as otherwise also is not in accordance with the law.

1.2 Without prejudice to the generality of the above, the appellate order so passed is bad in law, illegal and void as the same is arbitrary and perverse.

2. VIOLATION OF PRINCIPLES OF NATURAL JUSTICE

2.1 In the facts and the circumstances of the case, and in law, the appellate order so framed is bad in law and illegal, as the same is framed in breach of the principles of Natural Justice.

2.2 Without prejudice to the generality of the above ground, in the facts and the circumstances of the case, the Ld. CIT (A) erred in –

- (i) not granting proper, sufficient, reasonable and fair opportunity of being heard to the Appellant while passing the appellate order; and*
- (ii) not granting an opportunity of personal hearing.*

WITHOUT PREJUDICE TO THE ABOVE

3. THE REASSESSMENT ORDER IS BAD IN LAW, ILLEGAL AND VOID

3.1 It is submitted that in the facts and the circumstances of the case, and in law, the reassessment order is bad in law, illegal and void as the necessary conditions for initiating and completion of the reassessment proceeding were not fulfilled, in terms of section 147 r.w.s. 148 of the Act.

3.2 It is submitted that in the facts and the circumstances of the case, and in law, the reassessment order is bad in law, illegal and void.

WITHOUT PREJUDICE TO THE ABOVE

4. INITIATION AND COMPLETION OF PENALTY PROCEEDING IS BAD IN LAW, ILLEGAL AND WITHOUT JURISDICTION

4.1 The Ld. CIT (A) erred in confirming the action of the A.O. in initiating and levying penalty u/s. 271(1)(c) of the Act on the Appellant.

4.2 It is submitted that in the facts and the circumstances of the case, and in law, the levy of penalty is bad in law, illegal and void as the

necessary conditions for initiating and levying the penalty were not fulfilled, in terms of section 271(1)(c) of the Act.

4.3 Without prejudice to the generality of the above, the CIT (A) erred in confirming the action of the A.O. in levying the penalty as the exact charge for levy of penalty was vague and ambiguous.

4.4 It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.

WITHOUT FURTHER PREJUDICE TO THE ABOVE

5. LEVY OF PENALTY OF RS. 12,51,564/- U/S. 271(1)(c) OF THE ACT

5.1 The Ld. CIT (A) erred in confirming the action of the A.O. in levying penalty of Rs. 12,51,564/- u/s. 271(1)(c) of the Act, on the ground of alleged furnishing of inaccurate particulars of income.

5.2 While doing so, the Ld. CIT (A) erred in –

- (i) Basing his action on surmises, suspicion and conjecture;*
- (ii) Taking into account irrelevant and extraneous considerations; and*
- (iii) Ignoring relevant material and considerations.*

5.3 It is submitted that in the facts and the circumstances of the case and in law, on merits also, no such penalty was leviable.

5.4 Without prejudice to the above, assuming – but not admitting – that penalty was to be leviable, such levy of a penalty equal to 100% of the amount of tax is arbitrary, excessive and not in accordance with the law.

6. LIBERTY

The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing.

9. During the course of hearing, the learned Authorised Representative submitted that the assessee had inadvertently failed to file the return of income within the time prescribed under section 139(1) of the Act for A.Y. 2014–15. It was

contended that the failure was neither deliberate nor with any intent to conceal income. The learned AR invited our attention to the fact that the tax audit report under section 44AB of the Act was duly filed within the prescribed time limit on 29.11.2014. It was argued that filing of the audit report within time clearly demonstrates that the assessee had disclosed its financial results to the Department and had subjected its accounts to statutory audit, which is inconsistent with any allegation of concealment.

10. The learned AR further submitted that the assessee firm has been compliant since its inception and has regularly filed its returns of income in other assessment years. In support of this contention, our attention was drawn to a chart placed at page No. 81 of the paper book, setting out the details of returns filed and compliances made in earlier and subsequent years. It was urged that the omission to file the return for the year under consideration was an isolated and inadvertent lapse.

11. The learned AR further invited our attention to page No. 9 of the paper book, being the relevant extract of the tax audit report furnished under section 44AB of the Act. It was pointed out that under Clause 26(i)(B)(b) of Form 3CD, there was a specific disclosure of liability towards Service Tax amounting to Rs. 27,08,250/-. It was submitted that this amount was duly considered while preparing the computation of income, a copy whereof is placed at page No. 3 of the paper book. The learned AR submitted that the said amount of Rs. 27,08,250/- was specifically included in the computation of income and

consequently formed part of the total income declared in the return of income filed in response to notice under section 148 of the Act. It was thus contended that there was full and true disclosure of the material particulars relating to the said liability and there was no suppression or misstatement of facts.

12. It was further submitted that the profit and loss account and the balance sheet were already annexed to the tax audit report which had been filed within the extended due date. The learned AR emphasized that the entire financial statements were on record before the Department well within the prescribed time and that the accounts were duly audited. It was therefore argued that the allegation of concealment is untenable, as the primary financial particulars were duly disclosed through the audit report and accompanying statements prior to initiation of reassessment proceedings.

13. The learned AR further invited our attention to the notice issued under section 148 of the Act dated 30.03.2021 placed on record. It was submitted that immediately upon receipt of the said notice, the assessee responded vide letter dated 25.04.2021, much prior to filing of the return of income in response to the said notice. Drawing our attention to the said reply, the learned AR submitted that the assessee had candidly disclosed all material facts relating to the impugned assessment year. In the said communication, the assessee specifically acknowledged receipt of notice under section 148 and stated that the computation of income for A.Y. 2014-15 had already been

prepared. It was further disclosed that the tax liability (net of TDS) amounting to Rs. 7,38,394/- had been discharged on 22.04.2021 and copy of challan was enclosed. The learned AR emphasized that even before filing the formal return in response to notice under section 148, the assessee had voluntarily brought on record the computation of income and details of tax payment. It was further submitted that the letter also explained the reasons for non-payment of interest under sections 234A, 234B and 234C, citing financial constraints due to the disruptions caused by COVID-19 and seeking time for discharging the interest liability. It was therefore contended that the conduct of the assessee was transparent and bona fide. The assessee did not wait for any further query or detection by the Assessing Officer but suo motu furnished the computation and paid the principal tax liability even prior to filing of the return. According to the learned AR, this sequence of events clearly demonstrates absence of any intention to conceal income or furnish inaccurate particulars.

14. The learned AR further invited our attention to the reasons recorded for reopening, a copy whereof is placed on record, as well as to the detailed reply submitted by the assessee dated 29.07.2021 objecting to the reopening. Referring to the reasons recorded, the learned AR submitted that the Assessing Officer has observed that the “belated tax audit report after the prescribed time limit is available on the e-filing portal” and proceeded on the premise that the audit report was filed beyond time. It was

submitted that this factual assumption is incorrect. The learned AR drew our attention to the reply filed before the Assessing Officer, wherein it was specifically pointed out that for the relevant assessment year the due date for furnishing the audit report in Form 3CB and Form 3CD had been extended by the CBDT vide order under section 119 from 30th September 2014 to 30th November 2014. It was demonstrated that the assessee had filed Form 3CB and Form 3CD on 29.11.2014, which was within the extended due date. Therefore, the allegation in the reasons recorded that the audit report was belated was factually erroneous. The learned AR further submitted that in the reply to the reasons, the assessee had clarified that the return of income was filed on 30.04.2021 in response to notice under section 148, and that the earlier non-filing was under the bona fide impression that the accountant had already filed the return along with the audit report. It was contended that the omission was unintentional and stood rectified immediately upon receipt of notice under section 148.

15. The learned AR further submitted that during the course of reassessment proceedings, the Assessing Officer had issued a show cause notice proposing certain variations to the returned income, inter alia, disallowance of excess remuneration to partners, disallowance of interest on vehicle loan and addition on account of difference in credits reflected in the bank account. It was contended that in the said show cause notice, the Assessing Officer had also indicated initiation of penalty proceedings

alleging concealment. However, the learned AR pointed out that though such variations were proposed at the stage of show cause notice, the assessment order ultimately passed under section 143(3) read with section 147 and section 144B accepted the returned income in substance or did not sustain the proposed concealment in the manner indicated in the show cause notice. It was submitted that the final assessment order does not contain any specific finding that the assessee had concealed particulars of income or furnished inaccurate particulars in respect of any particular item, nor does it deal with concealment in the context of the proposed variations. The learned AR emphasized that the assessment order merely records initiation of penalty proceedings in a routine manner without recording clear satisfaction as to which limb of section 271(1)(c) is attracted and in relation to which specific addition. According to the learned AR, when the show cause notice proposed certain variations and concealment but the final assessment order does not specifically sustain concealment on those grounds, the subsequent levy of penalty suffers from lack of proper satisfaction and application of mind.

16. In support of the contention that where the notice issued under section 274 read with section 271(1)(c) does not specify the exact limb, namely whether the penalty is for concealment of particulars of income or for furnishing inaccurate particulars of income, the penalty proceedings stand vitiated, the learned AR placed reliance on decisions of Co-ordinate Bench in case of **M/s. Korbusier Kinema Pvt. Ltd. vs. DCIT, ITA No.1016/M/2025**

and Ritu Multitrade Services Pvt. Ltd. vs. ITO, ITA No.938/Mum/2024.

17. The learned AR also placed reliance on decision of Co-ordinate Bench in case of **Association of Oral Maxillofacial Surgeons of India vs. ITO (Exemptions), ITA No.274/PUN/2023**. In the said case, while dealing with penalty under section 271(1)(c), the Co-ordinate Bench examined the applicability of Explanation 3 and further held that even where the return was filed only in response to notice under section 148, penalty would not automatically follow if there existed a reasonable cause.

18. The learned Departmental Representative (DR), on the other hand, strongly supported the orders of the lower authorities. It was submitted that the assessee admittedly failed to file the return of income within the time prescribed under section 139(1) of the Act. The subsequent filing of return only in response to notice under section 148 clearly demonstrates non-compliance with the statutory obligation.

19. The learned DR further contended that the plea advanced by the assessee that the return was not filed due to an inadvertent mistake on the part of the accountant cannot constitute a valid or reasonable cause in the eyes of law. According to the learned DR, statutory compliance is the responsibility of the assessee, and negligence or oversight of an accountant does not absolve the assessee from the consequences of default. It was thus submitted that the failure to file the return within the prescribed time was

without reasonable cause and the initiation as well as levy of penalty is justified in accordance with law.

20. We have carefully considered the rival submissions, perused the material available on record and examined the statutory provisions applicable to the facts of the present case.

21. At the outset, it is an undisputed position that the assessee did not file its return of income under section 139(1) of the Act for Assessment Year 2014–15 within the prescribed time. The return came to be filed only on 30.04.2021 in response to notice issued under section 148. The reassessment was completed under section 143(3) read with section 147 determining the total income at Rs. 40,50,371/-, being the same income declared by the assessee in response to notice under section 148. No addition over and above the returned income ultimately survived in the assessment order.

22. The Assessing Officer levied penalty under section 271(1)(c) on the premise that the assessee had concealed particulars of income by not filing the return under section 139 and by offering income only after issuance of notice under section 148. The learned CIT(A) confirmed the penalty.

23. The primary question which arises for consideration is whether, in the facts of the present case, levy of penalty under section 271(1)(c) is sustainable in law.

24. It is trite law that penalty under section 271(1)(c) is attracted where there is concealment of particulars of income or

furnishing of inaccurate particulars of income. The foundation of the penalty must be either (i) concealment of income, or (ii) furnishing of inaccurate particulars thereof. In the present case, the reassessment order accepts the returned income. No addition has been made over and above the income declared in response to notice under section 148. Thus, on facts, there is no finding that any income was detected by the Assessing Officer which had not been disclosed by the assessee. The Assessing Officer has proceeded on the footing that since the return was not filed under section 139(1) and was filed only after issuance of notice under section 148, the income so declared is deemed to have been concealed.

25. In this context, the applicability of Explanation 3 to section 271(1)(c) requires examination. Explanation 3 creates a deeming fiction in cases where a person fails, without reasonable cause, to furnish a return within the prescribed time and no notice under section 142(1)(i) or section 148 has been issued within such period, and the Assessing Officer is satisfied that such person has taxable income. However, even Explanation 3 operates only where the failure to file return is “without reasonable cause”.

26. Thus, the crucial issue is whether the assessee has established a reasonable cause for failure to file return within the time prescribed under section 139(1).

27. The learned AR has drawn our attention to the following facts:

- i. The tax audit report under section 44AB in Forms 3CB and 3CD was filed on 29.11.2014, within the extended due date prescribed by the CBDT under section 119.
- ii. The audited profit and loss account and balance sheet were thus on record.
- iii. The audit report contained specific disclosure of Service Tax liability of Rs. 27,08,250/-.
- iv. The computation of income had been prepared and the tax liability (net of TDS) was discharged even prior to formal filing of the return in response to notice under section 148.
- v. Immediately upon receipt of notice under section 148, the assessee filed a detailed reply, furnished computation and paid tax.
- vi. The omission to file return was under the bona fide impression that the accountant had filed the return along with the audit report.

28. These facts are borne out from the record. The filing of tax audit report within time and the disclosure of financial statements are inconsistent with any design to suppress income. It is not a case where the Department unearthed undisclosed income through investigation. The entire income was offered voluntarily in response to notice and was accepted as such.

29. The learned DR has contended that mistake of accountant cannot constitute a reasonable cause. While it is correct that

statutory compliance is the responsibility of the assessee, each case must be examined on its own factual matrix. The surrounding circumstances, conduct of the assessee and contemporaneous material must be considered.

30. In the present case there is no dispute regarding the correctness of returned income, there is no addition made, the tax audit report was filed within time, tax liability was voluntarily discharged prior to completion of assessment and there is no material to suggest deliberate withholding of income. On cumulative consideration of these factors, we are of the view that the omission to file return under section 139(1), though a default, was not accompanied by any intent to conceal income. The conduct of the assessee reflects negligence or inadvertence rather than concealment.

31. Therefore, in our considered opinion, the assessee has demonstrated reasonable cause for failure to file return within time and consequently the deeming fiction under Explanation 3 cannot be invoked mechanically.

32. Further, the reassessment order ultimately determines income at the returned figure. The show cause notice issued during reassessment had proposed certain variations; however, the final assessment order does not record a specific finding of concealment in respect of any particular addition. Penalty proceedings under section 271(1)(c) are quasi-criminal in nature and require clear satisfaction as to the precise charge. The assessment order must indicate whether the penalty is for

concealment of particulars of income or for furnishing inaccurate particulars. In the present case, the initiation is recorded in a routine manner without linking it to any specific addition or inaccurate claim. When the assessment itself has accepted the returned income, levy of penalty solely on the ground of non-filing of return under section 139(1), without establishing concealment of particulars, cannot be sustained.

33. We also take note of the judicial precedents relied upon by the learned AR, wherein co-ordinate Benches have held that penalty under section 271(1)(c) is not automatic and that in cases where income declared in response to notice under section 148 is accepted and reasonable cause is demonstrated, levy of penalty is not justified. The ratio emerging from those decisions is that the deeming provisions under Explanation 3 must be strictly construed and cannot be applied in a mechanical manner without examining the existence of reasonable cause and the factual conduct of the assessee. The principles laid down therein fortify the view that penalty is not a natural consequence of every procedural default.

34. In view of our foregoing analysis, since the income declared in response to notice under section 148 has been accepted without any addition and no independent detection of concealed income has been brought on record, and considering that reasonable cause for non-filing of return under section 139(1) stands established, the essential conditions for invoking section 271(1)(c) are not fulfilled. The penalty of Rs. 12,51,564/- is

therefore unsustainable in law. The order of the learned CIT(A) is set aside and the penalty is directed to be deleted.

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

Order pronounced in the open court on 24.02.2026.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, Dated 24/02/2026
Dhananjay, Sr.PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai