

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

**BEFORE SHRI PRASHANT MAHARISHI, VICE – PRESIDENT  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

<b>ITA No. 1409/Bang/2025</b>
<b>Assessment Year : 2016-17</b>

Basaveshwer Devalay English Medium Higher Primary School, Opp Bus Stand, Post Basavan Bagewadi, Dist Bijapur Karnataka – 586 203. <b>PAN: AABAB8933H</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 1 & TPS, Bijapur.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri G.S. Budiyaal, Advocate
Revenue by	:	Shri Balusamy N, JCIT-DR

Date of Hearing	:	23-02-2026
Date of Pronouncement	:	24-02-2026

**ORDER**

**PER SOUNDARARAJAN K., JUDICIAL MEMBER**

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 23/05/2025 in respect of the penalty levied u/s. 271(1)(b) of the Act for the A.Y. 2016-17 and raised the following grounds.

*“1. The order of Learned Commissioner of Income. Tax (Appeals), NFAC, Delhi, in so far it against the appellant, is oppsed to law. facts, equity, weight and evidence, facts and circumstances of the case.*

*2. On the facts and circumstances of the cases and provision of the law, the honorable commissioner of Income tax (Appeal) erred in confirming the penalty imposed by*

*assessing officer u/s 271(1)(b) of Rs 20,000/- without considering our written submission filed during the appeal proceedings.*

*3. The Appellant prays/craves leave to add, amend, alter any ground of Appeal in the interest of Justice and Equity at the time of hearing.”*

**2.** The brief facts of the case are that the assessee is running a school and the same has been established under the Kudal Sangam Development Board under the control of the Government of Karnataka. The said school has been established solely for the educational purposes and not for profit and therefore its income is exempt u/s. 10(23C)(iiiab) of the Act. Since their income was exempt, they were under the bonafide impression that the assessee need not file the return of income u/s. 139(1) of the Act. The AO based on the information that the assessee had made huge deposits in their bank accounts had issued notice u/s. 148A(b) of the Act. The assessee filed their reply to the said show cause notice and thereafter the AO made an order u/s. 148A(d) of the Act and simultaneously notice u/s. 148 was issued. Thereafter the assessee filed their return of income and claimed the entire income as exempt u/s. 10(23C)(iiiab) of the Act. Notices u/s. 143(2) as well as u/s. 142(1) were issued, but the assessee had not responded to the notices because of the pressure of work. The AO accepted the return of income filed and no tax liability has been arrived in the said computation. In the said order, the AO had proposed to impose penalties u/s. 271F of the Act for not filing their return of income u/s. 139(1) of the Act. Similarly, penalty u/s. 271(1)(b) of the Act was proposed for the non-compliance to the notices issued u/s. 143(2) as well as u/s. 142(1) of the Act.

**3.** Subsequently, the AO had issued a notice for levying penalty u/s. 271(1)(b) of the Act. The assessee submitted their response on 19/03/2024 and 08/05/2024.

**4.** The assessee submitted their reply and informed that because of the pressure of work i.e. the admission work, they have not verified the emails

and therefore the reply could not be filed for the above said notices and also informed that all the details were furnished before the AO including the return of income and therefore submitted that the penalty u/s. 271(1)(b) of the Act need not be levied. The AO had not accepted the said plea and confirmed the penalty u/s. 271(1)(b) of the Act. As against the said order, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) had confirmed the penalty levied u/s. 271(1)(b) of the Act.

**5.** The assessee is in appeal before this Tribunal against the said order of the Ld.CIT(A).

**6.** At the time of hearing, the Ld.AR submitted that the assessee had not intentionally failed to file the submissions to the notices issued u/s. 143(2) and 142(1) but because of the pressure of work, they had not viewed the email and therefore a lenient view may be taken and the penalty imposed u/s. 271(1)(b) of the Act may be deleted. The Ld.AR also filed paper books and also relied on the orders of the Coordinated Benches of this Tribunal and prayed to allow the appeal.

**7.** The Ld.DR relied on the orders of the lower authorities and prayed to dismiss the appeal.

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

**9.** It is an admitted fact that the assessee is running an educational institution and all its incomes are exempt from tax u/s. 10(23C)(iiiab) of the Act. We have also considered the explanation offered by the assessee that they have not verified the email ID because of the heavy admission work. Therefore the non-reply to the said notices were not wilful.

**10.** We have also perused the assessment order and in the assessment order, Nil income has been computed by the AO based on the return of

income filed u/s. 148 of the Act. Further, the reasoning given by the assessee for non-responding to the notices are also seems to be genuine one. Even the provision 271(1)(b) also uses the word “the assessing officer may direct that such person to pay by way of penalty”. Therefore, the Statute has given discretionary powers to the assessing officer to levy penalty by considering the reasons given by the assessee and therefore the word “may” has been used in the said provision. We have also considered the orders of the Coordinate Bench which was relied on by the Ld.AR. In the said orders relied on by the Ld.AR, in which penalty levied by the AO has been deleted for the reason that the assessment has not been made u/s. 144 of the Act which means that the assessee had subsequently participated in the assessment proceedings and therefore the penalty u/s. 271(1)(b) of the Act need not be imposed. The Hon’ble Chennai Tribunal in ITA No. 2104/Mds/2012 dated 08/03/2013 had taken such a view. Similarly, the Hon’ble Surat Tribunal also in ITA Nos. 424 to 430/Srt/2022 dated 24/02/2023 had deleted the penalties by saying that the assessment was made by accepting the return of income filed by the assessee and therefore it could not be said that the assessee had no valid reasons for not complying with the said notices.

**11.** As discussed in the earlier paragraphs, the assessee being a school was very much busy in attending the admission work and therefore they have not viewed the email. Further, the AO had also completed the assessment by accepting the return of income filed by the assessee which shows that there is no escapement of any income by the assessee. Apart from that, the provision also gave discretionary powers to the AO for imposing the penalty.

**12.** Considering all the above said facts, we are of the view that the penalty levied u/s. 271(1)(b) of the Act is not warranted and therefore we are deleting the penalty.

**13.** In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 24<sup>th</sup> February, 2026.

Sd/-  
(PRASHANT MAHARISHI)  
Vice – President

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Bangalore,  
Dated, the 24<sup>th</sup> February, 2026.  
/MS /

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

By order

Assistant Registrar,  
ITAT, Bangalore