



IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, GOA
BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER
ITA Nos. 487/PAN/2025
Assessment Year : 2020-21

Shri Beereshwar Co-op. Credit Society Ltd.

At Post: Madabhavi,

Tal.: Athani, Dist. Belgaum

PAN : AANAS0426Q

..... *Appellant*

V/s

Income Tax Officer,

Ward-2 Belagavi

..... *Respondent*

Appearances

Assessee by : Mr Shivanand Halbhavi ['Ld. AR']

Revenue by : Ms Rijula Uniyal ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 09/03/2026

घोषणा की तारीख / Date of Pronouncement : 10/03/2026

ORDER

PER G. D. PADMAHSHALI;

The captioned appeal of the assessee impugns DIN & Order ITBA/NFAC/S/250/2025-26/1082098769(1) dt. 29/10/2025 passed by the National Faceless Appeal Centre, Delhi ['Ld. NFAC' hereinafter] u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] which in turn arisen out of penalty order dt. 20/03/2023 passed u/s 270A of the Act by the National Faceless e-Asstt Centre ['Ld. NFeAC' hereinafter] anent to assessment year 2020-21['AY' hereinafter].



2. This appeal deals with the legitimacy of action of first appellate authority in confirming levy of penalty u/s 270A of the Act when appeal against quantum is pending for adjudication on merits.

3. We have heard the learned counsel for the assessee Mr Halbhavi and Ld. Uniyal representing respondent Revenue at length and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [‘ITAT- Rules’ hereinafter] perused the material placed on records and duly considered the facts in the light of settled legal position which are forewarned to parties present and ceased following facts from the case records;

3.1 During the previous year relevant to AY under consideration the assessee society filed its return declaring NIL income on 29/12/2020 after claiming deduction u/s 80P(2) of the Act. The case of the assessee was selected for scrutiny and consequential assessment was completed wherein deduction of ₹18,10,895/- claimed u/s 80P(2) in relation to interest received from Belagavi District Central Co-op. Bank [‘BDCC’] was disallowed and total income was assessee accordingly by an order dt. 05/09/2022 framed u/s 143(3) r.w.s. 144B of the Act.

3.2 Consequent to aforesaid assessment, the Ld. NFeAC initiated penal proceedings u/s 270A by service of notice dt. 30/12/2022, and by notice dt. 15/02/2023, 22/02/2023 & 01/03/2023 the assessee was called upon to show case as to why a penalty in its case should not be levied for under reporting of income. When notices remained to be responded, the Ld. NFeAC culminated the proceedings by imposing a penalty @50% of tax sought to be evaded i.e. ₹2,82,500/- holding it as under reporting of income straightway.

3.3 In so far as the quantum addition is concerned, the assessee challenged the denial of 80P(2) deduction to it in respect of interest income received from BDCC on the investment made in the regular course of business which is still pending before the Ld. first appellate authority for disposal.

3.4 The impugned levy of penalty u/s 270A of the Act was also assailed by the assessee by filing first appeal before Ld. first appellate authority. Pending the disposal of former quantum appeal the Ld. NFAC by an impugned order dt 29/10/2025 however upheld the action of Ld. NFeAC in imposing the penalty u/s 270A of the Act.



3.5 The assessee in this appeal alleged the action of Ld. NFAC for confirming levy of penalty prematurely without first dealing with the quantum appeal on merits as violative of natural justice.

4. In adjudicating the issue under consideration, without reproducing the provisions of section 270A of the Act, it shall be purposive to state that, from AY 2017-18 the AO, CIT, CIT(A) and PCIT are severally empowered at a discretion to initiate and levy a penalty @50% and @200% of tax sought to be evaded respectively on under-reported income and when such under-reported income is in consequence of mis-reporting. The bare reading of this provision intractably demands for determination of under-reporting and misreporting of income prior to levy of any penalty u/s 270A of the Act. That is to say, the determination of under-reporting and misreporting of income must precede the levy of penalty and in the absence of any such determination of under-reporting or misreporting of income the jurisdiction to initiate penal proceedings u/s 270A of the Act fails. The determination of default triggers the penal action of imposition which in law cannot prematurely succeed over the action of levy of penalty.

5. In the extant case, we note that, the appellant assessee preferred two appeals before Ld. NFAC i.e. one against quantum appeal and second appeal against levy of penalty arisen out of such quantum appeal. The Ld. NFAC exercising the co-terminus power over the subject matter of quantum addition and levy of penalty has kept quantum appeal of the appellant pending for disposal and whereas confirmed the penalty levied by the Ld. NFAC by the impugned order. This leaves us with the question ‘as to whether the action of the Ld. NFAC confirming the penalty prematurely without first dealing the quantum appeal is bad in law and violative of principle of natural justice?’

6. In first place, it shall be purposive to quote that, ‘a penalty is levy of additional tax’ as held by the Hon’ble Supreme Court in ‘*CIT Vs Bikaji Dadabhai & Co.*’ [1961, 42 ITR 123 (SC)] which their hon’ble lordships subsequently reiterated in ‘*Jain Brothers Vs Union of India*’ [1970, 77 ITR 107 (SC)]. In the light of aforesaid judicial precedents, we are heedful to state that, the Ld. NFAC without first adjudicating the pending quantum appeal, that is to say without first determining the basic tax payable has proceeded to determine the

additional tax payable by the appellant in the form of penalty u/s 270A. This in our considered view is like, building the floors in the air without first laying down the foundation on the earth.

7. The sound general rule is that penalty cannot in law be levied on a doctrine of *'the substance of the matter'* as distinguished from its legal signification, as a subject is not liable to penalty on 'supposed spirit of law or by inference or by analogy. In this context it is worthy to quote from the observation of Hon'ble Guwahati High Court made at para 7 in the case of *'CIT Vs Maskara Tea Estate'* [1981, 6 Taxman 191 (Gau)] that; *Lord Summer observed in Ormand Investment Co. v. Betts [1928, AC 143] 'the Crown does not tax by analogy but by statute'*;

"It is sometimes said that we should apply the spirit and not the letter of the law so as to bring in cases which, though not within the letter of the law, are within the mischief at which the law is aimed. But it has long been recognised that our courts cannot so apply taxing Acts."

8. The penalty proceedings are penal in nature and character hence attracted only when contravention of statutory obligations as



contemplated in the statute is established beyond an iota of reasonable doubt. However, in the present case, the Ld. NFAC's adjudication confirming the levy of penalty preceded over pending adjudication of quantum appeal which in our considered opinion amounted to levy of penalty on 'supposed spirit of law or by inference or by analogy' which is bad in law and violating of natural justice. For the reasons, we have no hesitation in setting-aside the impugned premature penalty adjudication back to the file of Ld. NFAC at the stage of its institution with a direction to deal therewith in accordance with law on remand only after disposing of the quantum appeal of the appellant assessee pending before it in relation thereto first.

9. The appeal in result is allowed for statistical purposes in aforestated terms.

In terms of rule 34 of ITAT Rules, 1963 the order pronounced in the open court on date mentioned herein before.

**-S/d-
PAVAN KUMAR GADALE
JUDICIAL MEMBER**

**-S/d-
G. D. PADMAHSHALI
ACCOUNTANT MEMBER**

Panaji/Dt: 10th March, 2026.

Copy of the Order forwarded to :

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| 1. The Appellant. | 2. The Respondent. | 3. The CIT(A)/NFAC Concerned |
| 4. PCIT Concerned | 5. DR, ITAT, Panaji Bench, Goa | 6. Guard File |

By Order,
Sr. Private Secretary / AR ITAT, Panaji.