IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH:COCHIN

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.578/Coch/2024
Assessment Year : 2017-18

Jomon John Puthooparmapil Sea View Ward Bazar PO Alappuzha 688 012 **PAN NO :ADUPJ1971C**	**Vs.**	NFAC Delhi
APPELLANT		**RESPONDENT**

Appellant by	:	Shri R. Krishnan, A.R.
Respondent by	:	Smt. Leena Lal, Sr. D.R.

Date of Hearing	:	29.01.2025
Date of Pronouncement	:	29.04.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of ld. CIT(A)/NFAC dated 28.05.2024 vide DIN & Order No.ITBA/NFAC/S/250/2024-25/1065197896(1) for the AY 2017-18 passed u/s 250 of the Income Tax Act, 1961 (in short "The Act").

2. The assessee has raised the following grounds of appeal:

1. The Officer below were not justified in levying & confirming the penalty levied u/s. 272A(1)(d).
2. The Officers below failed to appreciate the fact that, your appellant had complied with the notice issued u/s. 142(1) dated 02/02/2019. The assessment records would show that all the notices issued thereon have been complied with.
3. Such replies have not been verified by the A.O. from the records.
4. For the above grounds and further reasons as may be adduced at the time of hearing. Your appellant prays that the penalty levied may be cancelled.

3. Brief facts of the case are that the scrutiny assessment was completed u/s 143(3) of the Act on 30/12/2019. During the course of assessment proceedings, the notice issued u/s 142(1) of the Act dated 12/02/2019 was not complied by the assessee. Therefore notice u/s. 274 r.w.s. 272A(1)(d) of the Act dated 26.10.2019 was issued to the assessee for compliance. However, the assessee failed to comply the notice. Again, the AO had issued a show cause notice u/s. 272A(1)(d) dated 01.03.2021 to explain as to why the penalty of Rs.10,000/- for default committed u/s 272A(1)(d) of the Act should not be imposed. In response, the assessee filed reply on 05/03/2021, however the same was not found satisfactory by the AO and therefore imposed penalty of Rs.10,000/- u/s 272A(1)(d) of the Act.

4. Aggrieved by the penalty order passed by the AO, the assessee preferred an appeal before ld. CIT(A)/NFAC.

5. The ld. CIT(A)/NFAC confirmed the action of AO as the assessee failed to explain a single sentence as to why the assessee could not comply the notice u/s. 142(1) dated 12.02.2019 and also failed to explain as to how the penalty imposed by the AO is incorrect. In the absence of any reply, the action of AO imposing the penalty of Rs.10,000/- u/s 272A(1)(d) of the Act was confirmed and accordingly, the appeal of the assessee was dismissed.

6. Aggrieved by the order of the ld. CIT(A)/NFAC, the assessee has preferred an appeal before this tribunal.

7. Before us, the ld. AR of the assessee submitted that the authorities below failed to appreciate the fact that the assessee has complied with the notice issued u/s. 142(1) of the Act on 02.02.2019 which could be verified from the assessment records. Further, ld. AR also submitted that if subsequent compliance accepted by the AO during the course of assessment proceeding

and the AO passed an order u/s. 143(3) of the act and not u/s. 144 of the Act, the penalty u/s. 271 (1)(d) should not be levied.

8. The ld. DR on the other hand supported the orders of the authorities below.

9. We have heard the rival submissions and perused the material available on record. It is an undisputed fact that the AO has passed the assessment order u/s. 143(3) of the Act for the AY 2017-18 on 30.12.2019. During the course of assessment proceedings, the AO has observed that the notice u/s 142(1) issued on 12/02/2019 was not complied by the assessee. In fact the assessee in his grounds of appeal has submitted that he had complied with the notice issued u/s. 142(1) of the Act dated 02.02.2019. Further the assessee also submitted that the assessment record would also show that all the notices issued thereon have been complied with. Therefore, we are of the considered opinion that the AO has passed the assessment order u/s. 143(3) of the Act on 30.12.2019 after considering the submission made by the assessee during the course of the assessment proceeding. Therefore we find that finally the assessment order was passed under section 143(3) of the Act and not under section 144 of the Act. This means that subsequent compliance in the assessment proceedings was considered as good compliance and the default committed earlier were ignored by the assessing officer. Therefore, in such circumstances, there could have been no reason to come to the conclusion that the default was willful.

9.1 We find that the instant appeal is also squarely covered by the decision of the Co-ordinate Bench of ITAT Delhi in the case of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan trust vs ACIT 5

DTR 429 (Delhi Tribunal) wherein the Coordinate Bench in paras 2.4 and 2.5 has held as under:-

> *2.4 Coming to the issue of recording of satisfaction, it may be mentioned that mere initiation of penalty does not amount to satisfaction as held by Hon'ble Delhi High Court in the case of CIT vs. Ram Commercial Enterprises Ltd. (2001) 167 CTR (Del) 321 : (2000) 246 ITR 568 (Del). In absence of recording of the satisfaction in the assessment order, mere initiation of penalty will not confer jurisdiction on the AO to levy the penalty.*
>
> *2.5 We also find that finally the order was passed under s. 143(3) and not under s.144 of the Act. This means that subsequent compliance in the assessment proceedings was considered as good compliance and the defaults committed earlier were ignored by the AO. Therefore, in such circumstances, there could have been no reason to come to the conclusion that the default was willful."*

9.2 As the facts of this case are identical, we hold that the imposition of penalty u/s 272A(1)(d) of the Act was patently wrong, especially in view of the fact that the impugned assessment order has been passed u/s 143(3) of the Act. While setting aside the impugned order, we direct the assessing Officer to delete the penalty.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 29th Apr, 2025

Sd/-	**Sd/-**
(Inturi Rama Rao)	**(Keshav Dubey)**
Accountant Member	**Judicial Member**

Bangalore,
Dated 29th Apr, 2025.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Cochin.