theTAXtalk

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं सुश्री पदमावती यस, लेखासदस्य के समक्ष
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
MS. PADMAVATHY.S, ACCOUNTANT MEMBER

ITA No.2108/CHNY/2026 निर्धारण वर्ष/Assessment Year: 2013-14		
SWAMY VIVEKANANDHA VIDHYALA TRUST, KADAYAMPATTI (PO), KADAYAMPATTI, SADAYAMPATTI S.O. KADAYAMPATTI, SALEM-636651, TAMIL NADU	Vs.	ITO, EXEMPTIONS WARD, SALEM.
अपीलार्थी **Appellant**		प्रत्यर्थी **Respondent**
Permanent Account Number of Assessee**:**		**AALTS6083Q**
अपीलार्थी द्वारा/Appellant represented by:	Mr. Bhupendran, Advocate	
प्रत्यर्थी द्वारा/Respondent represented by:	Ms. Pushpa Hemachand,Sr.AR	

सुनवाई की तारीख / Date of conclusion of hearing:	05-08-2026
घोषणा की तारीख / Date of pronouncement:	11-08-2026

आदेश / O R D E R

PER PADMAVATHY.S, A.M:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi, (in short "CIT(A)") passed u/s. 250 of the Income Tax Act, 1961 (in short "the Act") dated 01.02.2026 for Assessment Year (AY) 2013-14. The issue contented by the assessee in this appeal pertains to the levy of penalty u/s. 272A(2)(e) of the Act.

2. The assessee is a charitable trust running an educational institution and is registered u/s. 12A of the Act. The assessee did not file the return of income for the year under consideration. The AO received information that the assessee has deposited cash amounting to Rs. 75,55,200/- into the bank account during the year under consideration. Since the assessee did not file the return of income, the A.O reopened the assessment by issue of notice u/s. 148 of the Act. The assessee in response to notice u/s. 148 filed the return of income declaring Nil income after claiming exemption u/s. 10(23C)(iiiad) of the Act. The AO completed the assessment u/s. 147 of the Act accepting the income returned by the assessee. Subsequently, the AO initiated penalty proceedings u/s. 272A(2)(e) of the Act. The assessee submitted before the AO that the return of income was not filed by the assessee due to the bonafide belief that when the income is exempt there is no requirement to file the return of income. The assessee further submitted that due to non filing of the return, there is no loss to the revenue and there is no intention on the part of the assessee to conceal any income. Accordingly, the assessee prayed that the penalty be not levied. The A.O however did not accept the submissions of the assessee and levied penalty of Rs. 3,04,300/-. Aggrieved, the assessee filed further appeal before the CIT(A). The CIT(A) however confirmed the penalty by holding that:

> *a) The appellant has undisputedly contravened the provisions of Section 139(4C) of the Income Tax Act, 1961, by failing to file its return of income for the Assessment Year 2013-14 within the prescribed due date of 31st October 2013.*
>
> *b) The appellant's claim of bonafide belief that return filing was not required is not acceptable. Ignorance of law cannot be pleaded as an excuse, particularly when the appellant is managed by educated professionals and has been regularly filing returns under another PAN in subsequent years.*
>
> *c) The contention that there was no revenue loss is irrelevant for the purpose of levy of penalty under Section 272A(2)(e), as the penalty is*

imposed for failure to comply with a statutory procedural requirement, and not for tax evasion or concealment of income.

d) The absence of malafide intention or mens rea is also not relevant, since penalty under Section 272A(2)(e) is a strict liability provision which does not require proof of guilty intention.

e) The language of Section 272A(2)(e), particularly the use of the word "shall", makes the levy of penalty mandatory upon establishment of default. There is no discretion vested with the appellate authority to waive or reduce the penalty in the absence of reasonable cause.

f) The appellant has failed to demonstrate any reasonable cause for the default within the meaning of Section 273B of the Act. The reasons advanced by the appellant do not constitute reasonable cause so as to grant immunity from penalty.

g) Public policy considerations and legislative intent demand strict enforcement of the provisions of Section 139(4C) to ensure transparency and regulatory oversight of
institutions claiming exemption.

h) The Assessing Officer has correctly established the period of default and has rightly computed the penalty at Rs. 3,04,300/- (being 3,043 days x Rs. 100 per day), strictly in accordance with law.

i) In view of the above, no infirmity is found in the penalty order passed by the Assessing Officer, and there exists no justification for interference with the same.

3. Though the assessee has raised several grounds contending the levy of penalty during the course of hearing, the Ld. Authorized Representative (AR) of the assessee submitted arguments pertaining to ground No.8 and further submitted that the rest of the grounds are not pressed. The relevant ground reads as under:

8) Without prejudice, the Learned Commissioner (Appeals) also erred in not considering that for calculating the number of days of default, the period during which the Appellant could perform an act but failed to perform alone can be taken into account and as such, the period after expiry of time limit under Section 139(4) till the issue of Notice under Section 148 and also the period covered by Covid-19 Pandemic are to be excluded, as to be reasonable, just and fair.

4. The Ld. AR submitted that for the purpose of levy of penalty u/s. 272A(2)(e) of the Act the period as considered by the AO is not correct and that the penalty should be calculated only up to the period allowed u/s. 139(4A) of the Act. The Ld. AR further submitted that the assessee cannot file the return of income beyond the time line as specified u/s. 139(4A) of the Act and therefore levy of penalty beyond the time limit for the reason of non filing is not applicable since the assessee cannot file the return of income beyond the said time limit. The Ld. AR also submitted that an identical issue has been considered by the Raipur Bench of the Tribunal in the case of Bethany Seva Sangam vs. ITO [2023] 155 taxmann.com 352 (Raipur-Trib.), where it is held that:

> *"17. Apropos the alternative contentioon of the Ld. AR that penalty u/s. 272A(2)(e) of the Act could have been imposed only for the period reckoned from the "due date of filing of the said return" under sub-section (1) of section 139 of the Act, i.e., from 30-9-2012 till the date specified in sub-section (4A) of section 139 of the Act, i.e., up to 31-3-2014, we find substance in the same. As section distinguishable as against those involved in the present appeal before us, the same would not carry the 31.10.2013 (cctual dy per JCBDT) 17. Apropos the alternative contenfion of the Ld. AR that penalty u/s. 272A(2)(e) of the Act could have been imposed only for the period reckoned from the "due date of filing of the said return" under sub-section (1) of section 139 of the Act, i.e., from 30-9-2012 till the date specified in sub-section (4A) of section 139 of the Act, i.e., up to 31-3-2014, we find substance in the same. As section 272A(2)(e) did cast an obligation on the 4 assessee trust to furnish its return of income under sub-section (4A) of section 139 of the Act, which in turn, refers to the period contemplated under sub-section (1) of section 139 of the Act; or to furnish the same within the period and manner prescribed under said sub-section, falling which the assessee is to be visited with the penalty therein prescribed, i.e. @ Rs. 100/- for every day during which failure continues.*
>
> *18. As the assessee trust/society could have validly filed its return of income under sub-section (4A) of section 139 of the Act, latest within the period specified under sub-section (4) of section 139 of the Act, therefore there is a substance in the claim of the Ld. AR that no penalty could have been validly imposed upon the assessee for the period falling thereafter. We say so because, after the lapse of the period specified for filing a delayed return as contemplated in sub-section (4) of section 139 of the Act, no return of income on a suo motu basis could have been filed by the assessee. In sum and substance, as the return of income could Mave been*

filed by the assessee-trust under sub-section (4A) of section 139 of the Act latest by 31-3-2014, i.e., the period provided under sub-section (4) of section 139 of the Act, therefore, obligation cast upon the assessee under sub-section (4A) of section 139 of the Act, f.e., filing of the return of income, having been rendered as unworkable after the lapse of the period within which the return of income could be filed u/s.139 of the Act: therefore, the penalty for the period falling thereafter could not have been imposed. Our aforesaid conviction is fortified by the order of the ITAT, Hyderabad, in the case of G Pulla Reddy v. JCIT (2010) 47 DTR 1 (Hyd.). The Tribunal observed that for levying penalty u/s. 272A(2)(e), the period of default was to be counted up to the time limit laid down in section 139(4) of the Act. For the sake of clarity, relevant observations of the Tribunal are culled out as under:

> *"8.8. Further the argument of the assessee counsel is that the penalty to be levied for non-filing the return of income to the period within which the assessee could have filed the return of income and it cannot be levied for an indefinite period till the default continues. We find force in this argument of the learned counsel for the assessee. The assessee cannot file a return of income after the time limit provided u/s 139(4) of the IT Act. In such circumstances even if the assessee files the return of income for any assessment year after the expiry of the time limit laid down u/s 139(4) it is invalid return. In view of this, we are of the opinion that for default u/s 272A(2)(e) of the IT Act, time limit to be counted as laid down in section 139(4) of the IT Act. Accordingly, we direct the Assessing Officer to recomputed the penalty. The learned DR relied on the order of the Tribunal in the case of Sri Dadar (W.Rly) Sidhachakra Vardhaman Tap Ayambil Khata v. Dy. Director of Investigation (E) (59 ITD 253 (SMC)). This order of the Tribunal is delivered by single Member Bench hence not followed."*

19. We, thus, in terms of our observations above, direct the A.O. to restrict the penalty imposed u/s. 272A(A) (e) of the Act up to the period that was available to the assessee-trust for filing its return of income under sub-section (4) of section 139 of the Act, i.e., up to 31-3-2014., the Ground of appeal No. 1 is partly allowed in terms of our observations above."

5. The Ld. Departmental Representative (DR), on the other hand, submitted that the assessee filed the return of income only after issue of notice u/s. 148 of the Act and until such time the failure to file the return of income is a continuous default on the part of the assessee. The Ld. DR accordingly argued that the penalty which is levied for every day of failure u/s. 272A(2)(e)

of the Act should be levied until the date of filing the return of income by the assessee in response to notice u/s. 148 of the Act.

6. We have carefully considered the rival submissions and perused the material available on record. The only issue pressed before us is whether the penalty levied under section 272A(2)(e) of the Act could be computed till the date on which the assessee filed the return of income in response to the notice issued under section 148 of the Act, or whether such penalty is liable to be restricted only up to the last date available to the assessee for furnishing the return under the provisions of section 139. The fact that the assessee did not furnish its return of income within the time prescribed under section 139(4A) of the Act is not in dispute. However, the contention of the Ld. AR is that the default contemplated under section 272A(2)(e) cannot be regarded as continuing beyond the period during which the assessee could have legally furnished the return on its own. The Ld. DR, on the other hand, contended that the default continued till the return was actually filed in response to notice issued under section 148 and, therefore, the penalty has been rightly computed for the entire period. Section 272A(2)(e) provides for levy of penalty for every day during which the failure to furnish the return continues. However, the expression "during which the failure continues" has to be understood in the context of the statutory scheme governing the filing of returns. The obligation cast upon the assessee under section 139(4A) to furnish the return of income can be discharged only within the period prescribed under section 139. Once the time limit prescribed under section 139(4) expires, the assessee is no longer empowered under the Act to voluntarily furnish a valid return of income. Consequently, after the expiry of such statutory period, the obligation becomes incapable of voluntary

compliance and the default, in our considered view, cannot be regarded as continuing indefinitely. Any return furnished thereafter is only in pursuance of proceedings initiated under section 148, which is an independent statutory mechanism.

7. We notice that an identical issue has been considered by the Raipur Bench of the Tribunal in the case of Bethany Seva Sangam (supra) where the Coordinate Bench, after examining the interplay between sections 139(4A), 139(4) and 272A(2)(e), has held that although section 272A(2)(e) obligates a charitable trust to furnish the return under section 139(4A), such obligation can be discharged only within the period prescribed under section 139(4). It was, therefore, held that once the period available for filing a belated return expires, the obligation to furnish the return on a suo motu basis becomes unworkable and penalty cannot be levied for the period falling thereafter. While arriving at the said conclusion, the Coordinate Bench also relied upon the decision of the Hyderabad Bench of the Tribunal in G. Pulla Reddy, wherein it was held that for the purpose of section 272A(2)(e), the period of default has to be reckoned only up to the time limit prescribed under section 139(4) of the Act. In our considered view if the interpretation canvassed by the Revenue is to be accepted then it would result in levy of penalty for a period during which the assessee had no statutory right to furnish a valid return voluntarily and that such an interpretation would amount to treating the default as continuing even when the Act itself did not permit the assessee to perform the statutory obligation. It is a well-settled principle that the law does not compel a person to perform an impossibility. Therefore, once the period prescribed under section 139(4) expires, the default contemplated under section 272A(2)(e) cannot be regarded as continuing merely because the

assessee subsequently furnished the return in response to a notice issued under section 148. Therefore respectfully following the above judicial precedence we hold that the penalty under section 272A(2)(e) is liable to be computed only up to the last date prescribed under section 139(4) of the Act and not till the date of filing of the return in response to notice issued under section 148. We, therefore, remit the issue back to the AO for the limited purpose to re-compute the penalty by restricting the period of default up to the last date available to the assessee for furnishing the return under section 139(4) of the Act.

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

Order pronounced on 11th day of August, 2026 at Chennai.

Sd/-
(एबी टी. वर्की)
(ABY. T. Varkey)
न्यायिक सदस्य / Judicial Member

Sd/-
(पदमावती यस)
(Padmavathy.S)
लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: *11th August, 2026.*
EDN, Sr. P.S

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

EJTADA DURGA NARESH
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1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF