

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

*(Conducted through Virtual Court)*

**ITA No. 168/Ind/2021**  
**Assessment Year: 2005-06**

Smt. Arundhati Tiwari Bhopal	<b>बनाम</b>	CIT(A) NFAC, Delhi
(Appellant / Assessee)	<b>/Vs.</b>	(Respondent/ Revenue)
<b>PAN: AAMPT0449C</b>		
Assessee by	Written-Submission by Shri Pawan Tejwani, AR	
Revenue by	Shri Ashish Porwal, DR	
Date of Hearing	03.08.2022	
Date of Pronouncement	10.08.2022	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

1. This appeal filed by assessee is directed against the order dated 28.05.2019 of Ld. Commissioner of Income Tax (Appeals), (NFAC), Delhi [**"Ld. CIT(A)"**] which in turn arises out of the order of penalty dated 25.03.2015 passed by the learned DCIT-1(1), Bhopal [**"Ld. AO"**] u/s 271(1)(c) of the Income-tax Act, 1961 [**"the Act"**] for the Assessment-Year 2005-06.

2. The assessee has filed following grounds of appeal:

***"1. That the order u/s 250 of the Income Tax Act, 1961 passed by the Learned Commissioner of Income-tax-Appeals, National***

**Faceless Assessment Centre is bad & defective both in the law and facts.**

**2. That the order u/s 143(3) of Income Tax Act, 1961 was completed on 28.12.2007 and Total income of the assessee was assessed at Rs. 15,83,072.00 adding back agricultural income. The same was appealed before the Ld. CIT(A)-1, Bhopal and addition on account of agricultural income was confirmed to Rs. 7,91,536.00 which was purely on estimated basis. On that estimated basis Learned DCIT-1(1) had initiated and made penalty order on assessee. Aggrieved by the same, assessee has preferred appeal to CIT(Appeal)-NFAC whereas Ld. CIT-Appeals has made contradictory decision in two different assessment years and affirmed the penalty only in AY 2005-06 of Rs. 300000/- and deleting the penalty in AY 2006-07 of Rs. 260000/- which is bad in law and against the principle of natural justice, and the same is unwarranted pronouncement.**

**3. That the appellant craves leave to add, alter, delete or modify any ground of appeal at any stage.”**

3. Ld. AR appearing on behalf of the assessee has filed Written-Submission which is held on record. We have considered the Written-Submission of Ld. AR and Oral-Submission of Ld. DR. Accordingly, we are proceeding to dispose of this appeal.

4. Precise facts of the case are such that the assessee is engaged in the activity of nursery under the name and style of M/s Van Nidhi Farms and Nursery, Bhopal. For the relevant assessment-year, the assessee filed original return of income on 24.10.2005 declaring an agricultural income of Rs. 14,50,572/- earned from nursery, besides taxable income of Rs. 60,000/- from other sources. Subsequently, a survey was conducted by Income-Tax Department on 12.05.2006 wherein it was observed that the activities carried out by the assessee at nursery were non-agricultural. Ld. AO, therefore, made a belief that the income chargeable to tax has escaped assessment and took action u/s 147 by issuing a notice dated 23.11.2006 u/s 148 of the act. Ld. AO also issued notices u/s 143(2) and 142(1) from time to time which were duly complied with by the assessee. Finally, the Ld. AO completed assessment by taxing entire income from nursery as non-agricultural. Being aggrieved by assessment-order, the assessee filed an

appeal to Ld. CIT(A). The Ld. CIT(A) decided appeal vide order dated 18.03.2014 accepting 50% of income from nursery as agricultural and 50% as non-agricultural on estimation-theory. Accordingly, the Ld. CIT(A) allowed part-relief to the assessee.

5. Subsequently thereafter, the Ld. AO passed penalty-order dated 25.03.2015 wherein he imposed a penalty of Rs. 3,00,000/- u/s 271(1)(c) of the Act on the premise that the assessee has concealed particulars of income or furnished inaccurate particulars of income. Aggrieved by penalty-order, the assessee filed appeal to Ld. CIT(A). Ld. CIT(A) conducted appeal-proceeding under Faceless Scheme wherein he confirmed the penalty of Rs. 3,00,000/- vide order dated 25.07.2021.

6. Now the assessee has filed this appeal assailing the penalty-order dated 25.07.2021.

7. Ld. AR submitted that the assessee has earned income from nursery which is though agricultural income but the Ld. AO has treated the same as non-agricultural income. Finding no precise basis for identification and segregation, the Ld. CIT(A) followed estimation-theory and determined 50% portion as agricultural and 50% as non-agricultural and thereby partly deleted and partly upheld the addition made by Ld. AO. Therefore, it is very much clear that the computation of taxable income of assessee is resting upon estimation, there being no concrete basis. Ld. AR has submitted that when the computation of taxable income is harping upon estimation-theory, there is no question of concealing particulars of income or furnishing of inaccurate particulars and therefore the situation does not warrant imposition of penalty u/s 271(1)(c) of the Act. Hence there is no justification in the action of Ld. AO in imposing penalty u/s 271(1)(c) of the Act.

8. Ld. AR has further submitted the status of immediately subsequent assessment-year 2006-07. Ld. AR has submitted that exactly same issue, without any deviation, was involved in the assessment-year 2006-07 where similar penalty of Rs. 2,60,000/- imposed u/s 271(1)(c) by assessing officer

was deleted by Ld. CIT(A) vide order dated 25.07.2021. Ld. AR has placed on record a copy of the order. The relevant para of the Order reads as under:

**“2.3 Decision:**

***I have carefully considered the ground of appeal, penalty order and submission of the appellant. In A.Y. 2006-07 the appellant has shown exempt agricultural income of Rs. 13,86,446/- and Rs. 1,60,350/- as business income in her return of income. The assessing officer treated the entire income as business income of the appellant and did not allow exemption of agricultural income in any of the years. Ld. CIT(A) followed the precedence of earlier years and treated 50 percent of the Income of appellant as business income and 50 percent income as agricultural income. The enhancement of business income of appellant is based on estimates only.***

***Accordingly, I delete the penalty of Rs. 2,60,000/- levied by the Assessing Officer in A.Y. 2006-07. Ground of appeal no.1 and 2 are allowed. Other grounds are not disposed of as relief is allowed to the appellant on merits.”***

Ld. AR has submitted that when the penalty has been deleted by CIT(A) in the identical circumstances in assessment year 2006-07, there is no reason to deviate in assessment-year 2005-06 under consideration and confirm the penalty imposed by Ld. AO. The Ld. AR has strongly mentioned that there must be a consistency in the approach of revenue and therefore the penalty imposed in assessment year 2005-06 should also be deleted.

9. We have considered the submissions of Ld. AR and perused the record. We find sufficient merit in both submission of Ld. AR, viz. (i) the determination of taxable income of assessee involved an element of estimation and hence it is not a case of concealing particulars of income or furnishing inaccurate particulars of income; and (ii) the Ld. CIT(A) has deleted exactly same penalty in same circumstances in assessment-year

2006-07. It is also not on record that the revenue has filed any appeal against the order of Ld. CIT(A) for assessment-year 2006-07 by which the penalty was deleted. Hence we are inclined to hold that the penalty of Rs. 3,00,000/- imposed by Ld. AO and confirmed by Ld. CIT(A) in the present case is not sustainable. Accordingly, we delete the penalty.

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

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 10.08.2022.

Sd/-

(MADHUMITA ROY)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 10.08.2022

Patel/Sr. PS

- Copies to: (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Benches, Indore*