



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.147/CTK/2022

Assessment Year : 2015-16

B.N.Developers Pvt Ltd., At: Baniamal, PO: College Road, Tinimuhani, Kendrapara	Vs.	ITO, Kendrapara Ward, Kendrapara
PAN/GIR No.AAABC6183 D		
(Appellant)	..	(Respondent)

Assessee by : Shri K.K.Bal, AR

Revenue by : Shri S.C.Mohanty, Sr. DR

Date of Hearing : 10 /01/2023

Date of Pronouncement : 10/01/2023

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi, dated 8.7.2022 in Appeal No.ITBA/NFAC/S/250/2022-23/10343774830(1) for the assessment year 2015-16 confirming the penalty of Rs.1,03,410/-, levied under section 271(1)(c) of the Act.

2. Shri K.K.Bal, AR appeared for the assessee and Shri S.C.Mohanty, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR that the Assessing Officer has levied penalty without striking off of the relevant clauses in the penalty notice. It was the further submission that the notice alleged to have been issued by

the Id CIT(A) has not been received by the assessee. It was the submission that the penalty as levied by the AO and confirmed by the Id CIT(A) is liable to be deleted or alternatively the issue in this appeal may be restored to the file of the Id CIT(A) for fresh adjudication.

4. In reply, Id Sr DR submitted that the assessee has not appeared before the Id CIT(A) even though substantial opportunities have been granted. It was the submission that these are fresh arguments being placed by the Id AR and same cannot be considered.

5. We have considered the rival submissions. A perusal of the order of the Id CIT(A) shows that the Id CIT(A) has not adjudicated the issue of penalty on merits. Id CIT(A) has dismissed the appeal of the assessee on the ground that the assessee has not appeared before him in the course of hearing. It is noticed that the Id CIT(A) has in para 4 of his order mentioned that four opportunities have been granted to the assessee by sending notice through registered e-mail but the assessee has submitted that he has not received any mail. It is possible that the notice sent in mail could have gone to the spam folder. This being so, considering the interest of justice, we are of the view that the issue in this appeal may be restored to the file of the Id CIT(A) for re-adjudication. Accordingly, we restore the issue in this appeal to the file of the Id CIT(A) for fresh adjudication after granting adequate opportunity of being heard to the assessee.

6. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 10/01/2023.

Sd/-
(Arun Khodpia)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 10/01/2023
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : B.N.Developers Pvt Ltd.,
At: Baniamal, PO: College Road,
Tinimuhani, Kendrapara
2. The Respondent: ITO, Kendrapara Ward,
Kendrapara
3. The CIT(A)-, NFAC, Delhi
4. Pr.CIT-, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack