

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President  
&  
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 2/KOL/2023  
Assessment Year: 2016-2017**

**Kalna II CADP Farmers Service  
Co-Op. Society Limited,.....Appellant  
C/o. S.N. Ghosh & Associates, Advocates,  
2, Garstin Place, 2<sup>nd</sup> Floor, Suite No. 203,  
Off. Hare Street, Kolkata-700001  
[PAN: AACAK2236M]**

**-Vs.-**

**Income Tax Officer,.....Respondent  
Ward-1(2), Burdwan,  
Aayakar Bhawan, Burdwan,  
Kachari Road, Court Compound,  
P.O. & P.S. Burdwan,  
Dist. Purba Bardhaman-713101,  
West Bengal**

**Appearances by:**

*Shri Somnath Ghosh, Advocate, appeared on behalf of the  
assessee*

*Shri P.P. Barman, Addl. CIT, Sr. D.R., appeared on behalf  
of the Revenue*

Date of concluding the hearing : April 26, 2023

Date of pronouncing the order : April 27, 2023

**O R D E R**

**Per Shri Rajpal Yadav, Vice-President (KZ):-**

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals),

National Faceless Appeal Centre (NFAC), Delhi dated 29.11.2022 passed for A.Y. 2016-17.

2. The assessee has taken four grounds of appeal. However, its grievances revolve around a single issue, namely ld. CIT(Appeals) has erred in confirming the penalty of Rs.4,44,815/- imposed under section 271(1)(c) of the Income Tax Act.

3. The ld. Counsel for the assessee has placed on record a paper book containing 44 pages. He pleaded that the addition on which this penalty has been computed, has been deleted by the ld. 1<sup>st</sup> Appellate Authority on the quantum appeal. Copy of the ld. CIT(Appeals)'s order dated 14.07.2020 passed on the assessment order dated 24.12.2018 passed under section 143(3) is available on pages no. 6 to 14 of the paper book.

4. The ld. D.R., on the other hand, was unable to controvert this fact.

5. On due consideration of the above facts, we are of the view that sub-clause (iii) of section 271(1)(c) provides a mechanism for computation of penalty. The penalty is to be computed on the basis of the addition made to the income of the assessee disclosed in the return filed under section 139(1). The penalty could be either equivalent to the taxes sought to be evaded by the assessee or maximum to the extent 300 times. Since the very

foundation to compute the penalty is no more available after the decision of the Id. CIT(Appeals) on the assessment order, therefore, no penalty could be imposed upon the assessee. Accordingly, we allow this appeal of the assessee and delete the penalty.

**6. In the result, the appeal of the assessee is allowed.**

Order pronounced in the open Court on April 27, 2023.

**Sd/-  
(Rajesh Kumar)  
Accountant Member**

**Sd/-  
(Rajpal Yadav)  
Vice-President(KZ)**

***Kolkata, the 27<sup>th</sup> day of April, 2023***

*Copies to : (1) Kalna II CADP Farmers Service  
Co-Op. Society Limited,  
C/o. S.N. Ghosh & Associates, Advocates,  
2, Garstin Place, 2<sup>nd</sup> Floor, Suite No. 203,  
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*(2) Income Tax Officer,  
Ward-1(2), Burdwan,  
Aayakar Bhawan, Burdwan,  
Kachari Road, Court Compound,  
P.O. & P.S. Burdwan,  
Dist. Purba Bardhaman-713101,  
West Bengal*

*(3) Commissioner of Income Tax (Appeals),  
Income Tax Department, National Faceless  
Appeal Centre (NFAC), Delhi*

*(4) Commissioner of Income Tax ,*

- (5) *The Departmental Representative*  
(6) *Guard File*  
*TRUE COPY*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal,*  
*Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***