

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “SMC” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1423/Del/2023  
[Assessment Year : 2018-19]**

Bhushan Aviation Limited, S-2, F Block, International Trade Tower, Nehru Place, New Delhi-110019. <b>PAN-AADCB2842F</b>	vs	ACIT, Circle-4(2), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Ashwani Kumar, CA	
<b>Respondent by</b>	Shri Om Parkash, Sr.DR	
<b>Date of Hearing</b>	20.07.2023	
<b>Date of Pronouncement</b>	26.07.2023	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre (“NFAC”) dated 22.03.2023 for the assessment year 2018-19 .

2. The assessee has raised following solitary ground of appeal:-

1. *“That the order dated 22.03.2023 passed u/s 260 of the Income Tax Act, 1961 (hereinafter called “the Act”) by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (“NFAC”) is against law and facts on the file in as much as he was not justified to uphold the action of the Learned Assessing Officer in imposing a penalty of Rs.1,50,000/- for alleged failure of the Appellant Company to get its accounts audited and to furnish a report of such audit as required under section 44AB of the Act by ignoring the facts and circumstances of the case, legal position and submissions filed on behalf of the Appellant Company.”*

3. Facts giving rise to the present appeal are that the assessee filed its return of income on 29.03.2019 declaring total income of NIL and claiming a loss of INR 45,14,448/-. The case was selected for limited scrutiny. During the course of assessment proceedings, the Assessing Officer ("AO") initiated penalty u/s 271B of the Income Tax Act, 1961 ("the Act") of INR 1,50,000/-. The penalty proceedings were initiated on account of non-filing of Audit Report within time. Before AO, it was contended that assessee company is a subsidiary of Bhushan Steel Company. Bhushan Steel Company was under insolvency and was taken over by the Bamnipal Steel Ltd. [a group company of Tata Group]. Therefore, the process of collation of accounts and compiling of requisite information, finalizing the accounts and submitting them to the Auditors, both the statutory as well as tax audit got delayed. It was contended that there was a reasonable cause for such delay. However, the contention of the assessee was not accepted by the AO. He levied penalty of INR 1,50,000/- u/s 271B of the Act to the assessee.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, also sustained the penalty and dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. Ld. Counsel for the assessee vehemently argued that authorities below failed to appreciate the facts in right perspective. He submitted that levy of penalty u/s 271B of the Act is not automatic, if the assessee is in a position to

prove bonafide, if the person or the assessee as the case may be for any failure refer to in the said provision, if he proves that there was reasonable cause for the said failure, no penalty can be levied. In the case in hand, it is the contention of the assessee that the Audit Report was delayed because of the fact that the holding company was under going proceedings under Insolvency and Bankruptcy Code (“IBC”) and finally was taken over by Bamnipal Steel Ltd. [a group company of Tata Group] which resulted into delay in collating the evidences and compiling the data. Hence, there was reasonable cause for delay in submitting Audit Report.

7. On the other hand, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below. He submitted that the assessee and its holding company are two independent entities. Moreover, the assessee was not subjected to IBC proceedings.

8. I have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. In our considered view, without verifying this contention, the lower authorities have mechanically imposed a penalty. Considering the material available on record, I am of the considered view that delay was caused due to reasonable cause as it is stated that evidence from holding company could not be collected due to proceedings under IBC. I therefore, direct the AO to delete the penalty of INR 1,50,000/- imposed u/s 271B of the Act to the assessee. Ground raised by the assessee is thus, allowed.

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

Order pronounced in the open Court on 26<sup>th</sup> July, 2023.

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI