

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No. 1262/M/2023
Assessment Year: 2018-19**

M/s. Jaliyan Developer, Office No. 14, 2 nd Floor, Sujata Apartment, Rani Sati Marg, Malad East, Mumbai-400 097 PAN: AAHFJ7856Q	Vs.	Income Tax Officer, NFAC, Delhi, Ward-30(1)(5), Kautilya Bhavan, Bandra Kurla Complex, Mumbai-400 051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri. Prateek Jha, A.R.
Revenue by : Shri. Ujjawal Kumar, Sr. AR

Date of Hearing : 10 . 08 . 2023
Date of Pronouncement : 29 . 08 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Jaliyan Developer (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 21.02.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2018-19 on the grounds inter-alia that :-

"1. The Ld CIT(A) erred in passing the Order under section 250 without granting the assessee reasonable opportunity of being heard.

2. Without prejudice to Ground No. 1, the Ld CIT(A) erred in not appreciating that the appeal against the Assessment Order filed on 23.06.2021 was still pending and the penalty related to the total income determined by the Ld AO.

3. The Ld CIT(A) erred in dismissing the assessee's appeal against the penalty order without appreciating that the assessee had followed completed project method of accounting under which the amount of disallowance, if any, was to be added to the work-in-progress.

4. The Ld CIT(A) erred in not appreciating that the assessee had not misreported its income of the year and disallowance made was on highly debatable issue.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : on the basis of assessment framed under section 143(3) of the Income Tax Act, 1961 (for short ‘the Act’) at the income of Rs.11,56,180/- the Assessing Officer (AO) initiated the penalty proceedings under section 270A of the Act on the ground that the assessee has under reported its income to the tune of Rs.11,56,180/-. Consequently AO levied the penalty to the tune of Rs.1,78,630/- being the 50% of the underreported income of Rs.3,57,260/-.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal against the penalty order who has confirmed the penalty by dismissing the appeal due to non prosecution of appeal by the assessee. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light

of the facts and circumstances of the case and law applicable thereto.

5. Bare perusal of the impugned order passed by the Ld. CIT(A) goes to show that notices issued for the service of the assessee for 02.02.2023, 10.02.2023 and 20.02.2023 were remained unresponded by the assessee and decided the appeal for want of prosecution. The Ld. CIT(A) is not empowered to decide the appeal filed by the assessee for want of non prosecution without deciding the same on merits as has been held by the Hon'ble Bombay High Court in case of Commissioner of Income-tax (Central) Nagpur vs. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay).

6. Furthermore, the Ld. A.R. for the assessee brought on record the fact that for 10.02.2023 the date fixed by the Ld. CIT(A) for hearing the assessee has duly filed the adjournment request, copy of e-portal is placed on the record and sought adjournment up to 25.02.2023 but the Ld. CIT(A) without considering the same proceeded to dismiss the appeal for want of prosecution. Facts recorded in para 4.2d of the impugned order also goes to prove that the entire appeal has been decided within 19 days even without considering the adjournment request of the assessee.

7. In view of what has been discussed above, we are of the considered view that the assessee has not been provided with adequate opportunity of being heard which makes the impugned order passed by the Ld. CIT(A) not sustainable in the eyes of law, hence set aside. To decide the issue once for all and to impart

justice case is remanded back to the Ld. CIT(A) to decide afresh after providing opportunity of being heard to the assessee.

8. Resultantly, the appeal filed by the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 29.08.2023.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 29.08.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.