

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

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND  
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.3616/M/2023  
Assessment Year: 2015-16**

M/s. Raja Construction, Shop No.2, Kailash Mahal, R.B. Mehta Road, Ghatkopar (East), Maharashtra- 400 077 <b>PAN: AAAGR0273Q</b>	Vs.	DCIT 27(3), 423, Vashi Railway Station Complex, Vashi, Navi Mumbai, Maharashtra – 400 703
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Chintan Shah, A.R.  
Revenue by : Smt. Mahita Nair, Sr. D.R.

Date of Hearing : 21 . 02 . 2024  
Date of Pronouncement : 22 / 02 / 2024

**ORDER**

**Per : Sandeep Singh Karhail, Judicial Member:**

1. The present appeal has been filed by the assessee challenging the impugned order dated 16/08/2023 passed under section 250 of the Income Tax Act, 1961 ("the Act") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, ["learned CIT(A)"], for the assessment year 2015-16, which in turn arose from the penalty order passed under section 271(1)(c) of the Act.

2. In this appeal, the assessee has raised the following grounds:-

**"Ground I: Want of Natural Justice**

1. *On the facts and in the circumstances of the case and in law, the National Faceless Appeal Centre ('NFAC') erred in upholding the order passed by Income Tax Officer ("TTO") without giving reasonable opportunity of hearing to the Appellant and thereby violating the principles of natural justice.*

2. *The Appellant prays that the order passed by the ITO be struck down as bad in law.*

**WITHOUT PREJUDICE TO GROUND NO. I:**

**Ground II: Reopening of assessment bad in law**

1. *On the facts and circumstances of the case and in law, the NFAC erred in confirming the action of the ITO in upholding the penalty levied u / s 271(1)(c) of the Income Tax Act 1961 ('the Act').*

2. *The Appellate prays that penalty levied u/s 271(1) (c) of the Act ought to be deleted.*

**Ground III: General**

*The Appellant craves leave to add to, alter and/or amend the above grounds of appeal."*

3. During the hearing, the learned Authorised Representative ("*learned AR*") at the outset submitted that the learned CIT(A) vide impugned order dismissed the appeal filed by the assessee ex-parte without giving reasonable opportunity of hearing to the assessee. The learned AR submitted that on 02/08/2023 the learned CIT(A) issued a notice directing the assessee to file written submissions on or

before 14/08/2023 in support of the grounds of appeal raised by the assessee along with the documentary evidence. In response thereto, on 12/08/2023 the assessee filed an application seeking adjournment till the end of August 2023 to compile the details as required. It is submitted that however on 16/08/2023 the learned CIT(A) dismissed the appeal filed by the assessee and upheld the penalty levied under section 271(1)(c) of the Act. In this regard, the learned AR furnished the copy of the notice dated 02/08/2023 issued by the learned CIT(A) and the copy of the adjournment letter filed by the assessee on 12/08/2023. The learned AR also furnished the screenshot from the website of NFAC as proof of the aforesaid adjournment request.

4. Having considered the submissions of both sides and perused the material available on record, we find that the learned CIT(A) though issued a notice to the assessee to file its written submission in support of the grounds raised in its appeal along with the supporting documentary evidence, however without waiting for receipt of aforesaid documents dismissed the appeal filed by the assessee. From the perusal of the impugned order, it is also evident that there is no mention of the aforesaid notice issued by the learned CIT(A) on 02/08/2023 or the adjournment sought by the assessee vide letter dated 12/08/2023. Thus, it is sufficiently evident

that this is not a case wherein the learned CIT(A) after rejecting the adjournment request of the assessee proceeded to decide the appeal ex-parte. Rather, in the present case, the learned CIT(A) completely overlooked the adjournment request of the assessee. Accordingly, we find merits in the submissions of the learned AR and set aside the impugned order being passed in violation of the principles of natural justice. Therefore, in view of the aforesaid circumstances, we restore the appeal to the file of the learned CIT(A) to decide the grounds raised by the assessee on merits after affording a reasonable opportunity of being heard to the assessee. Further, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default.

5. In the result, the appeal by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 22.02.2024.**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 22.02.2024.

\* 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.