

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 135/DEL/2024**

**Assessment Year: 2014-15**

Nidhi Garg, M-10, Guru Harkrishan Nagar, New Delhi-110087.	<u>Vs</u>	Income-tax Officer, Ward-44(7), New Delhi
<b>PAN- DDEPS4710M</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Shri Lalit Mohan, Adv.	
<b>Department represented by</b>	Shri Om Parkash, Sr. DR	
<b>Date of hearing</b>	20.03.2024	
<b>Date of pronouncement</b>	22.03.2024	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 29.12.2023, pertaining to the assessment year 2014-15. The assessee has raised following grounds of appeal:

*“1 That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred both in law and on facts in upholding penalty of Rs. 8,74,339/- in an order dated 19.3.2020 under section 271(1)(c) of the Act.*

*2. That the learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC), New Delhi has erred both in law and on facts in dismissing the appeal by observing that "the appellant, in the present situation, appears to be guilty of laches or negligence and does not*

*take appropriate steps to peruse the remedy till about 495 days and thus does not take appropriate action in filing the appeal within the prescribed time. In the light of the above discussion and considering the facts and position of the law on this issue, I find that there is no sufficient cause for condoning the delay in the institution of appeal by the appellant and thus condonation of delay is hereby rejected". The finding is factually incorrect, legally misconceived and wholly untenable.*

*2.1 That the learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC), New Delhi has failed to appreciate that that there is no delay in filing of appeal in view of judgment of Hon'ble Apex Court in case of Cognizance For Extension of Limitation, In re in M.A. Nos. 665 of 2021 and 21 and 29 of 2022 dated 10.1.2022 reported in 441 ITR 722 which is binding under Article 142 read with Article 141 of Constitution of India.*

*2.2 That finding of the learned Commissioner of Income Tax (Appeals) that "the appellant has chosen not to file any reasons in respect of the delay in filing appeal. In my opinion, the appellant cannot sleep over the filing of the appeal within the statutory time limit. The appellant in this case did not take any pain to file the appeal for more than 495 days after the penalty order u/s 271(1)(c) was passed by the AO" is also factually incorrect, legally misconceived, and wholly untenable.*

*2.3 That the learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC), New Delhi has failed to appreciate that account of on- going Corona Virus pandemic the delay, if any is otherwise not caused on account of laches, malafide intention and gross negligence on the part of the appellant.*

*3. That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has failed to appreciate that once the disputed tax for the instant assessment year stood settled under Direct Taxes under the VSV Act, 2020 vide an order dated 4.12.2020 in light of the Form 5 u/s 5(2) read with section 6 of Direct Taxes under the VSV Act, 2020 issued by the learned Pr. Commissioner of Income Tax and the penalty levied was without jurisdiction and deserve to be quashed as such."*

2. At the outset learned counsel for the assessee contended that in quantum proceedings the assessee has settled the tax dispute with the Revenue under the Vivad Se Vishwas Scheme, 2020. He contended that in view of the dispute being settled with the Revenue in quantum proceedings the impugned penalty u/s 271(1)(c) of the Income-tax Act, 1961 (the "Act"), levied by AO and confirmed by learned CIT(A), does not have its legs to stand. Learned counsel submitted that under identical facts the Division Bench of this Tribunal in the case of Nalini Agarwal (ITA no. 1716/Del/2019 for A.Y. 2012-13 -order dated 25.09.2020 ) has held that penalty appeal filed by the Department in ITA no. 1716/Del/2019 is liable to be dismissed in view of the settlement of corresponding quantum appeal under the Direct Tax Vivad Se Vishwas Act, 2020.

3. Learned DR could not controvert the fact that the assessee ha settled the dispute in quantum proceedings under the Vivad Se Vishwas Scheme, 2020.

4. I have heard rival submissions and perused the material available on record. It is not disputed by the Revenue that the assessee has settled the dispute and Form no. 5 has been issued by the Revenue in this regard, which is enclosed in PB at page no. 61. The Division Bench of this Tribunal in the case of DCIT vs. Nalini Agarwal (supra) has held as under:

*"3. At the time of hearing, the learned representative for the assessee referred to Form 3 issued by the Competent Authority in terms of Section 5(1) of The Direct Tax Vivad Se Vishwas Act, 2020 qua the settling of dispute on quantum in ITA No. 589/Del/2017 ; therefore, it is submitted that the appeal be permitted to be withdrawn. Further, it is submitted that the penalty appeal filed by the Department in ITA No. 1718/ Del/2019 is also liable to be dismissed in view of the settlement of the corresponding quantum appeal under The Direct Tax Vivad Se Vishwas Act,2020. In this connection, the learned representative also referred specifically to Question No. 8 of the clarifications issued by the CBDT on provisions of The Direct Tax Vivad Se Vishwas Act, 2020 vide Circular No. 9/2020 dated 22.4.2020."*

4.1 Therefore, in the light of binding precedent, the impugned penalty levied u/s 271(1)(c) of the act cannot be sustained, same is hereby deleted.

5. Appeal of the assessee is allowed.

Order pronounced in open court on \_\_\_\_\_.

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**