

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 798/DEL/2024**  
**Assessment Year: 2009-10**

<b>Manish Choudhary, C-39, Inderpuri, New Delhi-110012 PAN- AEGPC 4644 A</b>	<u>Vs</u>	Income-tax Officer, Ward-36(3), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Ms. Prem Lata Bansal, Sr. Adv. & Shri Shivam Bansal, Adv.	
<b>Department represented by</b>	Shri Om Parkash, Sr. DR	
<b>Date of hearing</b>	21.05.2024	
<b>Date of pronouncement</b>	21.05.2024	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of National Faceless Appeal Centre (NFAC), Delhi, dated 31.01.2024, pertaining to the assessment year 2009-10. The assessee has raised following grounds of appeal:

*“01 That the Ld CIT(A), NFAC has erred in dismissing the appeal filed by the assessee and thereby confirming the penalty of ₹17.12.829/- imposed by the Assessing Officer u/s 271(1)(c) of the Act*

*02 That the Ld. CIT(A), NFAC has erred in dismissing the appeal on the ground of alleged delay of 1726 days which is contrary to facts on record.*

*Infact, penalty order u/s 271(1)(c) was received by the assessee on 17.03.2017 and the appeal was filed on 20.04.2017. Thus there was a delay of mere 04 days, which could have been condoned by the Assessing Officer in the interest of justice.*

*03 That the Ld. CIT(A), NFAC has erred in not deciding the appeal on merits when the assessee had replied to each and every notice issued by him vide communication dated 06.03.2020, 27.07.2021, 26.01.2022 and 18.11.2022. Since the Ld. CIT(A) has ignored the representations made by the assessee and therefore, the order passed by him deserves to be set aside.*

*04 That the Ld. CIT(A), NFAC has acted beyond his jurisdiction when he rejected the contention made by the assessee that no proper service of notice was effected on him during the assessment proceeding. Infact, burden was on the Department to prove that the service was properly effected during the proceeding. By not doing so, the order passed by him is vitiated in law.*

*05. That the principles of natural justice has been violated in the present proceeding and therefore, the order passed by CIT(A) NFAC is liable to be struck down*

*06 That the Ld. CIT(A), NFAC has erred in law when it ignored the material fact that no satisfaction had been recorded by the Assessing Officer in the assessment order as to under what limb, penalty proceeding was to be initiated. Even in the penalty order, it was not specifically mentioned as to under what limb, penalty is imposed, whether for concealment of income or for furnishing inaccurate particulars of income. Hence, the penalty order is liable to be quashed being contrary to law and contrary to judgement of various High Courts including Supreme Court*

*07 That the appellant seeks leave to add, amend, alter, abandon or substitute any of the above grounds during the hearing of the appeal.”*

2. Facts, in brief, are that for A.Y. 2009-10 the assessee filed its return of income declaring total income at Rs. 1,57,000/-. The assessment was completed ex parte u/s 144 of the Act at an income of Rs. 53,58,000/-. The AO also initiated penalty proceedings u/s 271(1)(c) of the Act. Vide penalty order dated 29.06.2012 the AO levied penalty of Rs. 17,12,829/- u/s 271(1)(c) of the Act @ 100% of the

tax sought to be evaded. Aggrieved against it the assessee appealed to the learned CIT(A), who vide impugned order dated 31.01.2024 dismissed the appeal on account of delay in filing the appeal. Aggrieved, the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee submitted that learned CIT(A), NFAC, has dismissed the assessee's appeal, without giving any finding on merit, on account of alleged delay of 1100 days in filing the appeal and observing that assessee had not responded to the notices nor filed any application for condonation of the delay. She submitted that penalty order u/s 271(1)(c) of the Act was received by the assessee on 17.03.2017 and the appeal was filed on 20.04,2017 and as such, there was a meager delay of 4 days which could have been condoned in the interest of natural justice. She reiterated the averments made in the grounds of appeal and prayed that order of learned CIT(A) may be set aside and matter may be restored to his file with direction to decide the appeal on merit after condoning the delay in filing of the appeal.

4. Learned DR opposed the submissions and relied on the order of learned CIT(A).

5. I have heard rival submissions and perused the material available on record. Considering the facts and circumstances of the present case, in order to subserve

the interests of natural justice, the order of learned CIT(A) is set aside and the matter is restored to the file of learned CIT(A) to give an opportunity to the assessee to file application for condonation of delay, supported with affidavit and after determination of the same, decide the appeal on merit, in accordance with law.

6. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 21.05.2024.

**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