

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 769/MUM/2024
Assessment Year: 2011-12**

Vijay Developers B002, Aangi, Sanghvi Nagar, Mira Bhayander Road, Thane – 401105 (PAN : AAGFV3361H)	Vs.	Income Tax Officer, Ward 2(4), Thane
(Appellant)		(Respondent)

Present for:

Assessee : Shri Arnav Jariwala, FCA
Revenue : Ms. Rajeshwari Menon, Sr.DR

Date of Hearing : 30.05.2024
Date of Pronouncement : 31.05.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1058993586(1), dated 22.12.2023 passed against the penalty order by the Income Tax Officer, Ward-2(4), u/s.271(1)(c) of the Income-tax Act (hereinafter referred to as the “Act”), dated 25.09.2014 for Assessment Year 2011-12.

2. Grounds taken by the assessee are reproduced as under:

“1. On the facts and in the circumstances of the case as well as law on the subject, the learned commissioner of the Income Tax (Appeals) has erred in confirming the action of the assessing officer in levying Penalty of Rs.4,62,304/- U/s.271(1)(c) of the I.T. Act, 1961.

2. It is therefore prayed that the above penalty may please be deleted as learned members of the tribunal may deem it proper.”

3. Brief facts of the case are that assessee firm is a builder and filed its return on 27.09.2011 reporting total income at Rs. Nil after claiming deduction u/s. 80IB(10) of Rs. 10,37,357 /-. Assessment was completed ex-parte u/s.144 since assessee failed to comply with the notices issued by the ld. Assessing Officer. Proceedings for imposing penalty was initiated in which assessee failed to substantiate its claim. Accordingly, penalty of Rs.4,62,304/- was imposed u/s.271(1)(c). Aggrieved, assessee went into appeal before the CIT(A).

4. We perused the order of ld. CIT and note that it is an ex-parte order whereby appeal is dismissed due to non-compliant attitude of the assessee despite several opportunities granted for hearing on various dates as tabled in para 4.1 of the said order. Ld. CIT(A) has also taken note of the fact about sending notices for hearing on email ID given by the assessee both as primary and secondary email IDs on the e filing profile as well as the latest return filed by the assessee. Further, from the perusal of the penalty order u/s.271(1)(c) by the ld. Assessing Officer, similar conduct of the assessee is observed in the penalty proceedings. Ld. Assessing Officer while imposing the penalty of Rs.4,62,304/- has noted that because there is no compliance by the assessee, he had no option but to proceed with the imposition of penalty.

5. Despite the aforesaid habitual behaviour of the assessee at all the stages of various proceedings, taking a lenient approach, we find it appropriate, in the interest of justice and fair play to remit the matter back to the file of CIT(A) for *denovo* meritorious adjudication. We direct the assessee, to be diligent in attending the hearings fixed for the appeal and assist in its expeditious and effective disposal. Assessee should not seek adjournments unless warranted by compelling reasons.

6. Since the matter is restored to the file of Ld. CIT(A) for meritorious adjudication in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The observations herein made by us in remanding the matter back to the file of Ld. CIT(A) will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 31 May, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31 May, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai