



**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.368/LKW/2024  
Assessment Year: 2012-13

Rajeev Gupta S/o/Legal Heir of Late Ramesh Chandra Gupta 133/118, Transport Nagar Kanpur	v.	The Income Tax Officer 3(3) Kanpur
TAN/PAN:		
(Appellant)		(Respondent)

Appellant by:	Shri Rajeev Gupta (Assessee)		
Respondent by:	Shri Sanjeev Krishna Sharma, D.R.		
Date of hearing:	18	09	2024
Date of pronouncement:	30	09	2024

**ORDER**

**PER SUDHANSHU SRIVASTAVA, J.M.:**

This appeal has been preferred by the assessee against the order dated 30.03.2024, passed by the Id. Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi for Assessment Year 2012-13.

2.0 The brief facts of the case are that the assessee had sold an immovable property on 18.06.2011 for a sale consideration of Rs.3,00,000/- as against the Circle Rate of the property of Rs.45,98,550/- mentioned in the Sale Deed. The assessee did not file the return of income for the year under consideration.

The Assessing Officer initiated proceedings under section 147 of the Income Tax Act, 1961 (hereinafter called 'the Act') by issuing notice dated 14.10.2016 under section 148 of the Act. In response to the said notice, none attended on behalf of the assessee. The Assessing Officer thereafter issued notice dated 20.06.2017 under section 142(1) of the Act fixing date for compliance on 10.07.2017, but none attended nor filed any reply on behalf of the assessee. The Assessing Officer, therefore, completed the assessment under section 144 of the Act after issuing show cause notice dated 22.11.2017 under 144 of the Act, assessing the income of the assessee at Rs.45,98,550/- as long term capital gain.

2.1 The Assessing Officer also initiated penalty proceedings under section 271(1)(c) of the Act, vide order dated 26.06.2018 and subsequently imposed a penalty of Rs.9,10,000/-.

3. Aggrieved, the assessee preferred an appeal before the Ld. First Appellate Authority. The appeal was assigned to NFAC. However, the appeal before the NFAC came to be dismissed for the reason of non-compliance.

4. Now, the assessee has approached this Tribunal challenging the dismissal of his appeal by the NFAC by raising the following grounds of appeal:

1. That in any view of the matter, penalty imposed under section 271(1) (c) of the Income Tax Act 1961 by order dated 26-06-2018 passed by the Learned Assessing officer, imposing a penalty of Rs.9,10,000/- is bad, both on the facts and in law.

2. That in view of the matter, the Learned CIT (A)/NFAC was wrong in passing the ex-parte order without providing opportunity to the assessee, hence the order as framed is not correct and violative of principles of natural justice.

3. That in the facts and circumstance of the case, the Learned CIT (A) / NFAC has erred in confirming the penalty under section 271(1) (c) of the Income Tax Act 1961 without accepting the grounds of appeal submitted. The imposition of penalty was bad in law and hence the same must be deleted or quashed.

4. That the Learned Assessing Officer has erred in imposing a penalty of Rs.9,10,000/- under section 271(1) (c) of Income Tax Act 1961 on a deceased person i.e. non - existing person, which has also been erroneously been confirmed by the CIT (A)/NFAC.

5. That the assessment as framed by the learned Assessing officer is illegal as no notice has been served by him on the legal heir of the assessee who is deceased, despite providing the aforesaid information was given to the learned Assessing Officer and CIT (A) / NFAC along with death certificate.

6. That the Learned Assessing Officer has erred in issuing penalty notice under section 271(1) (c) of Income Tax Act 1961 to the non-existing person i.e. Ramesh Chandra Gupta, who expired on 04-08-2016 (Bearing PAN-ACQPG5331G), which has also been upheld by the CIT (A) / NFAC.

*7. That appellant craves, leave, add, to alter, delete, substitute, amend and or grounds of appeal on or before the final hearing of the case, if necessity of the case.*

*8. In view of the above facts and grounds, the appeal must be allowed and the penalty order dated 26-06-2018 and the order dated 30-03-2024 passed by CIT (A) / NFAC must be vacated/set aside.*

5. There is a delay of one day in filing the appeal. The Assessee has submitted an application for condonation of delay and it was prayed that the delay be kindly condoned.

6. The ld. D.R. had no objection to the delay being condoned.

7. In view of the prayer by the Assessee and no objection by the ld. D.R., we condone the nominal delay of one day and admit the appeal for hearing.

8. The assessee appeared in person before us and prayed that the assessee's appeal may be restored to the file of the NFAC for the purpose of adjudication on merits.

9. Since the order passed by NFAC was an ex-parte order, the ld. Senior D.R. had no objection to the restoration of appeal to the NFAC.

10. We have heard both the parties and have also perused the material on record. It is evident that there was complete non-

compliance on the part of the assessee during the course of assessment proceedings, penalty proceedings as well as first appellate proceedings. However, looking into the facts of this case, we are of the considered view that the assessee deserves one more opportunity to present his case and, therefore, in the interest of substantial justice, we restore this file to the Office of the NFAC with the direction to hear the appeal on merits. We also caution the assessee to fully comply with the directions of the NFAC in the set-aside proceedings when called upon to do so, failing which, the NFAC shall be at complete liberty to pass the order in accordance with law, based on material available on record even if it is ex-parte qua the assessee.

11. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 30/09/2024.

Sd/-  
[ANADEE NATH MISSHRA]  
ACCOUNTANT MEMBER

Sd/-  
[SUDHANSHU SRIVASTAVA]  
JUDICIAL MEMBER

DATED:30/09/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR