

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “B”, MUMBAI
BEFORE SHRI. BR BASKARAN, ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 2162/MUM/2024 (A.Y.: 2015-16)**

&

ITA NO. 2161/MUM/2024 (A.Y.: 2016-17)

Maulana Azad Alpasankhyank Vs. Income Tax Officer Ward
Arthik Vikas Mahamandal Maryadit 2(2)(3), Mumbai
2nd Floor, D. D. Building, Shahid Room No. 542, Ayakar
Bhagat Singh Marg, Fort, Mumbai – Bhavan, Maharshi Karve
400023. Road, Churchgate, Mumbai –
400020.

PAN: AADCM6528R

(Appellant)

400020.

(Respondent)

Assessee Represented by : Shri. Shashank Mehta
Department Represented by : Shri. Ashok Kumar
Ambastha – SR. AR.
Date of conclusion of Hearing : 11.07.2024
Date of Pronouncement : 14.10.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. These two appeals are taken up together for disposal as the impugned order in both the appeals is passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi



[hereinafter referred to as the “CIT(A)”], under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] confirming the order dated 22.09.2022 passed u/s. 271(1)(b) of the Act by the Ward 2(2)(3), Mumbai (hereinafter referred to as “AO”) for the A.Y. 2015-16 by imposing penalty therein. Since the facts are same and the order is also of the same date, hence, in order to avoid multiplicity of decisions we propose to dispose off both the appeals by this common order.

2. The case pertaining to the A.Y. 2015-16 is taken as lead case.
3. The facts in brief are that the assessee company is a government company incorporated as Maharashtra State’s Channelizing Agency of Government of India’s National Minorities Development and Finance Corporation run by the Union Minority Affairs Ministry. The assessee has not filed its return of income for A.Y. 2015-16 and 2016-17 and case was reopened on the basis of information available in AIMS MULTI YEAR NMS of ITBA Portal regarding the assessee has received interest income of Rs. 57,77,684/- from State Bank of India and Rs. 86,54,427/- from Axis Bank Limited totaling to Rs. 1,44,32,111/- on which TDS of Rs. 5,77,773/- and Rs. 86,54,427 totaling to Rs. 92,32,200/- from its deposits with different banks as mentioned in para no. 1 of penalty order. Notice u/s. 148 of the



Act was issued on 22.03.2021 to which assessee did not file any reply and scrutiny assessment was carried out ex parte as per Section 147 r.w.s. 144B of the Act making an addition of Rs. 1,44,32,111/-. Since the assessee did not comply with notice u/s. 142(1) of the Act issued on 3 dates during the course of assessment proceedings, the penalty proceedings u/s. 217 (1)(b) of the Act was initiated. The assessee has not filed any reply to the penalty notice and the Ld. AO thus imposed the penalty of Rs. 30,000/- as find mentioned in para no. 7 of the order.

4. Aggrieved by the said order, appeal was filed before the Ld. CIT(A) who has dismissed the appeal vide impugned order and confirmed the order of the Ld. AO.

5. Aggrieved by the impugned order, the assessee is in appeal before us and has raised following grounds:

1. *“In the facts and circumstances of the case and in law, the Ld Commissioner of Income Tax (Appeals) [through the National Faceless Appeals Centre) has erred in confirming the action of the Ld. Assessing Officer in levying penalty amounting to Rs. 30,000/- under section 271(1)(b); disregarding the factual and legal matrix of the case.”*

6. Before proceeding further, we proceed to decide the application for condonation of delay wherein it is stated that the assessee being a



government company could not appoint the managing director on time and for that reasons due to departmental hurdles, the appeal could not be filed within the period of limitation. In support of condonation application, Affidavit of Managing Director of the assessee company has also been filed who has given the detailed reasons seeking condonation of delay on the ground that there is sufficient cause for condonation of delay.

7. We have heard the submissions and perused the record. The impugned order is dated 26.06.2023 and appeal was filed on 07.05.2024. Nothing contrary to the contents of the affidavit of the assessee has been brought on record by the revenue. We have considered the submissions of the assessee and the contents of the affidavit. The fact that the assessee is a government undertaking incorporated for looking after the work of the minority welfare, we are inclined to take a lenient view and the delay in filing the appeal is accordingly condoned.
8. We have also heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the department on merit. It is argued on behalf of the assessee that once the addition has been made by the Ld. AO, the imposing of the penalty in these given facts and circumstances of the case were not warranted and justified and has resulted into miscarriage of justice.



9. The Ld. DR on behalf of the revenue has submitted that the assessee remained negligent and not responded to the various notices issued during the scrutiny assessment as well as during the penalty proceedings and has thus supported and relied upon the judgment of the Ld. AO and the Ld. CIT(A).

10. We have considered the submissions. Section 271 (1)(b) of the Act provides as under:

“Section 271(1) If the Assessing Officer or the ⁹⁹[Joint Commissioner (Appeals) or the] Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—

(b) has failed to comply with a notice under sub-section (2) of [section 115WD](#) or under sub-section (2) of [section 115WE](#) or under sub-section (1) of [section 142](#) or sub-section (2) of [section 143](#) or fails to comply with a direction issued under sub-section (2A) of [section 142](#), or”

11. As is evident from the ingredients of the provisions extracted above that the penalty can be imposed if the assessee has failed to comply with the notice issued during the assessment proceedings. The justification on behalf of the assessee for noncompliance is that it is being a government undertaking, the employee/Managing Director etc. could not be



appointed and the work of the government company could not be looked after due to administrative hurdles.

12. We are of the considered opinion that in these given facts and circumstances the end of justice requires that the assessee should not be penalized once the addition has already been made by the Ld. AO. In the peculiar facts and circumstances of the case, imposing of penalty in this case, according to us, neither justified nor warranted and has resulted into miscarriage of justice.

13. For these reasons, the impugned order is not legally sustainable in the eyes of law and is accordingly set aside. The Ld. AO is directed to delete the penalty amount.

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14. Since the facts and circumstances of this case are same and similar to the ITA No. 2162/Mum/2024 and the impugned order is also passed by the same authority on the same date under the same provisions, the finding returned in ITA No. 2162/Mum/2024 shall mutatis mutandis applicable in this case also.



15. In the result, both the appeals filed by the assessee are allowed in the above terms.

Order pronounced in the open court on 14.10.2024

Sd/-
(BR BASKARAN)
(ACCOUNTANT MEMBER)

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Mumbai / Dated 14.10.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai