

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA Nos.1627 to 1629/PUN/2024
Assessment Years : 2016-17 to 2018-19**

Sanjay Ganpat Aher Plot No.88, Chopra Chordiya Nagar, Lam Road, Soubhagyanagar, Vihitgaon, Lam Road, Nashik – 422101	Vs.	ITO, Ward 2(1), Nashik
PAN: AIXPA7215N		
(Appellant)		(Respondent)

Assessee by : Smt. Deepa Khare
Department by : Shri Arvind Desai, Addl. CIT, DR
Date of hearing : 22-10-2024
Date of pronouncement : 24-10-2024

ORDER

PER R.K. PANDA, VP :

The above three appeals filed by the assessee are directed against the separate orders dated 29.06.2024 of the CIT(A) / NFAC, Delhi confirming the penalty of Rs.37,773/- u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for assessment year 2016-17, penalty of Rs.1,95,956/- u/s 270A for assessment year 2017-18 and penalty of Rs.9,05,358/- u/s 270A for assessment year 2018-19, respectively. Since identical grounds have been raised in these 3 appeals, therefore, for the sake of convenience, these appeals were heard together and are being disposed of by this common order.

2. First, we take up ITA No.1627/PUN/2024 for assessment year 2016-17 as the lead case. Facts of the case in brief, are that the assessee is an individual deriving income from salary and has filed his original return of income declaring total income of Rs.6,98,760/- after claiming deduction of Rs.1,21,876/- under Chapter VI-A. Subsequently, the assessee revised his return of income declaring total income of Rs.4,80,410/- by claiming deduction under Chapter VI-A at Rs.2,70,450/- and thereby claiming refund of Rs.45,020/-. The case of the assessee was reopened after recording reasons and notice u/s 148 of the Act was issued. However, the assessee did not file any return in response to the same. The notices issued u/s 142(1) of the Act were also remained un-complied with. In view of the above, the Assessing Officer completed the assessment u/s 144 of the Act. Since there was difference in salary income declared in the return of income and salary reflected in Form 26AS and in absence of any documentary evidence to his satisfaction to support the various claims made, the Assessing Officer made addition of Rs.4,92,149/- to the total income of the assessee and determined the taxable income at Rs.9,72,559/-. The Assessing Officer thereafter initiated penalty proceedings u/s 271(1)(c) of the Act. Rejecting the various explanations given by the assessee, the Assessing Officer levied penalty of Rs.37,773/- being tax @ 100% on the amount sought to be evaded.

3. Since the assessee filed the appeal before the CIT(A) / NFAC with a delay of 238 days, the CIT(A) / NFAC rejecting the various explanations given by the assessee, dismissed the appeal as not maintainable. The appeals for assessment

years 2017-18 and 2018-19 were also rejected by the CIT(A) / NFAC by not condoning the delay of 238 days on the ground that the assessee failed to offer any reasonable and convincing explanation for the delay in filing of the appeals.

4. Aggrieved with such order of the CIT(A) / NFAC, the assessee is in appeal before the Tribunal.

5. The Ld. Counsel for the assessee at the outset filed a copy of the order of the Tribunal in assessee's own case in quantum proceedings for assessment years 2016-17 to 2018-19 and submitted that the Tribunal has condoned the delay in filing of the appeal before the CIT(A) / NFAC in quantum proceedings and restored the issue to the file of the Assessing Officer for fresh adjudication of the issue. She submitted that since the quantum issue has already been restored to the file of the Assessing Officer, therefore, these penalties levied by the Assessing Officer for the above three assessment years do not survive and therefore, the appeals filed by the assessee should be allowed.

6. The Ld. DR on the other hand while conceding that the Tribunal has restored the quantum appeals to the file of the Assessing Officer for fresh adjudication submitted that he has no objection if the matter is restored to the file of the Assessing Officer for fresh adjudication of the issue after completion of the assessment proceedings.

7. We have heard the rival arguments made by both the sides and perused the orders of the Assessing Officer and the Ld. CIT(A) / NFAC. We have also considered the decision of the Tribunal in assessee's own case cited before us in the quantum proceedings. It is an admitted fact that the Ld. CIT(A) / NFAC did not condone the delay of 238 days in filing of the appeals before him for all the three assessment years on the ground that the assessee could not explain any reasonable cause to his satisfaction for the delay in filing of the appeals. We find that in quantum proceedings, the Tribunal condoned the delay of 238 days in filing of the appeals before the CIT(A)/ NFAC and has restored the issue to the file of the Assessing Officer for adjudication of the issue afresh by observing as under:

“4. We have given our thoughtful consideration to the assessee's pleadings and Revenue's vehement contentions in support of the respective stands. We observe that the necessary inference which flows from the above narrated facts is that the assessee could not put in appearance before the Assessing Officer along with all the relevant details because of Covid-2019 pandemic outbreak and the period thereof already stands excluded up-to 28.02.2022 by the hon'ble apex court in Cognizance for Extension of Limitation, In re 438 ITR 296 (SC) read with judgment in Cognizance for Extension of Limitation, In re 432 ITR 206 (SC) dated 08-03-2021 and 421 ITR 314 for all intents and purposes under the limitation law. That being the case, in light of the fact that assessee has already filed his explanation attributing the impugned further delay of 234 days each because of some glitches in the e-mail folder, we conclude that his remedy of pursuing various grievances could not be allowed to be jeopardized. We thus deem it as a fit case to condone the impugned delay of 238 days each in filing of the lower appeal before the CIT(A)-NFAC and restore the matter back to the Assessing Officer for his afresh adjudication, preferably within three effective opportunities of hearing, subject to the rider that it shall be the taxpayer's onus and responsibility only to plead and prove all the relevant facts in consequential proceedings. Ordered accordingly.”

8. Since the quantum appeals have already been set aside to the file of the Assessing Officer for adjudication by the Tribunal after condoning the delay, therefore, penalty levied by the Assessing Officer and confirmed by the CIT(A) /

NFAC does not survive, However, the Assessing Officer is at liberty to pass appropriate fresh penalty orders after completion of the assessments as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

9. In the result, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 24th October, 2024.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 24th October, 2024
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	22.10.2024		Sr. PS/PS
2	Draft placed before author	24.10.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			