

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "C", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,  
AND  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER

ITA NO. 2815/Del/2024		
A.YR. : 2016-17		
KOLAHAI INFOTECH PRIVATE LIMITED, 129, 1 <sup>ST</sup> FLOOR, TRANSPORT CENTRE, PUNJABI BAGH, NEW DELHI – 110 034 (PAN: AADCK3127C) (APPELLANT)	VS.	ASSESSMENT UNIT, INCOME TAX DEPARTMENT, DELHI CIVIC CENTRE, MKINTO ROAD, NEW DELHI – 2 (RESPONDENT)

Appellant by : Ms. Ananya Kapoor, Adv. & Shri Shivam Yadav, Adv.  
Respondent by : Sh. Om Parkash, Sr. DR.

Date of hearing : 06.11.2024

Date of pronouncement : 12.11.2024

**ORDER**

**PER SHAMIM YAHYA, AM :**

The Assessee has filed the instant Appeal against the Order of the Ld. CIT(Appeal)/NFAC, Delhi dated 06.05.2024, relating to assessment year 2016-17 on the following grounds:-

1. That in view of the facts and circumstances of the case and in law, the impugned penalty order dated 16.01.2024 passed under section 271 (1)(h) of the Income Tax Act, 1961 ('the Act') by Assessment Unit ('AU') and the impugned order dated

06.05.2024 passed under section 250 of the Act by NFAC in the case of the Appellant for AY 2016-17 is illegal, without application of mind, bad in law, not in accordance of the provision and in gross violation of the principles of natural justice and same are liable to be quashed.

2. That in view of the facts and circumstances of the case and in law, the penalty levied by AU vide order dated 16.01.2024 as upheld by NFAC vide its order dated 06.05.2024 is illegal, bad in law' and liable to be deleted.

3. That in view of the facts and circumstances of the case and in law, the AU and NFAC have erred in levying a penalty of Rs.30.000/- under section 271(1)(b) whereas the Assessment for the same year has been completed under section 147 r.w.s. 144B of the Act. Hence, the impugned penalty is liable to be quashed.

4. That in view of the facts and circumstances of the case and in law, the AU and NFAC have erred in levying a penalty of Rs.30,000/- under section 271(1)(b) of the Act and have not appreciated the fact that the assessment was not completed under section 144 of the Act. Hence, the impugned penalty' is bad in law', without jurisdiction and liable to be quashed.

5. That in view of the facts and circumstances of the case and in law', the AU and NFAC did not appreciate that the said penalty is even otherwise not leviable since there exists reasonable cause which prevented the Appellant from complying with the notices dated 04.01.2023, 10.04.2023 and 04.05.2023.

6. That in view of the facts and circumstances of the case and in law, the AU and NFAC have passed the impugned orders without appreciating the material available on record and the

explanation fled by the Appellant and the same have not been properly and judicially considered.

7. That the observations made and the penalty levied are unjust, illegal, bad in law and deserved to be quashed.

8. That in view of the facts and circumstances of the case and in law, the AU has erred in passing the impugned assessment order and NFAC has erred in upholding the same, without giving the Appellant a reasonable opportunity of being heard and personal hearing and the same is in clear violation of principles of natural justice.

9. That, in view of the facts and circumstances of the case and in law, the AU has grossly erred in passing a common order for the three alleged lapses and NFAC has erred in upholding the same. Hence, the impugned penalty order deserved to be quashed.

10. The Appellant craves leave to add, alter, modify or delete one or more grounds of appeal as may be considered necessary either before or during the hearing.

2. The brief facts of the case are that the assessee filed its original return of income for the AY 2016-17 on 15.10.2016 declaring loss of RS. 89,850/-. During the course of assessment proceedings, notices u/s. 142(1) of the Act were issued to the assessee on 04.01.2023, 10.4.2023 and 4.5.2023 which remained un-complied with. AO initiated penalty proceeding vide notice dated 19.5.2023 issued u/s. 274 rws 271(1)(b) of the Act. Reminder letters were issued on 26.10.2023, 03.11.2023 and 26.12.2023. In response assessee furnished its reply on 29.12.2023 which was found not satisfactory. The penalty proceeding was completed vide order u/s. 271(1)(b) of the Act on 16.1.2024 levying penalty of Rs. 30,000/-.

3. Upon assessee's appeal, Ld. CIT(A) affirmed the action of the AO.

4. Against this order, assessee is in appeal before us.

5. We have heard both the parties and perused the records. Ld. Counsel for the assessee pleaded that penalty in this case has been levied due to non-appearance of the assessee's CA on the stipulated date of hearing. Ld. AR for the assessee further submitted that assessee's CA was not well and hospitalized. In this regard, an affidavit was submitted and hospital documents were also provided. Hence, she pleaded that under these circumstances, the penalty need not be levied. Per contra, Ld. DR relied upon the orders of the authorities below.

5.1 Upon careful consideration, we find that there was a reasonable cause for non-appearance before the revenue authorities viz. illness and hospitalization of the assessee's CA. In this view of the matter, we are of the considered opinion, that penalty in dispute deserve to be deleted, hence, we direct to delete the penalty in dispute, in the interest of justice.

6. In the result, the Assessee's appeal is allowed.

Order pronounced on 12/11/2024.

Sd/-

(YOGESH KUMAR US)  
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

SRB

**Copy forwarded to:-**

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

Assistant Registrar