

**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.1804, 1815 to 1818/PUN/2024
Assessment years : 2014-15 to 2017-18**

P K Infraproject Private Limited GAT No.321, Chakan-Shikrapur Road, Tal – Khed, Kadachiwadi, Pune – 410501	Vs.	DCIT Central Circle 1(1), Pune
PAN: AAFCP0373H		
(Appellant)		(Respondent)

**ITA No.1789/PUN/2024
Assessment year : 2013-14**

Pratap Waman Khandebharad GAT No.321, Chakan-Shikrapur Road, Tal – Khed, Kadachiwadi, Pune – 410501	Vs.	DCIT Central Circle 1(1), Pune
PAN: ABGPK1279C		
(Appellant)		(Respondent)

Assessee by : Shri Rajiv Khandelwal (Virtual)
Department by : Shri Arvind Desai, Addl CIT DR
Date of hearing : 04-02-2025
Date of pronouncement : 12-02-2025

ORDER

PER R.K. PANDA, VP:

ITA No.1804/PUN/2024 filed by the assessee is directed against the order dated 09.07.2024 of the Ld. CIT(A), Pune-11 relating to assessment year 2014-15. ITA No.1815/PUN/2024 to ITA No.1818/PUN/2024 filed by the assessee are directed against the common order dated 09.07.2024 of the Ld. CIT(A), Pune-11 relating to assessment years 2015-16 to 2017-18 respectively. ITA

No.1789/PUN/2024 filed by the assessee is directed against the order dated 09.07.2024 of the Ld. CIT(A), Pune-11 relating to assessment year 2013-14. Since common issues are involved in all these appeals, therefore, these were heard together and are being disposed of by this common order for the sake of convenience.

2. In all these appeals, the assessee has basically challenged the order of the Ld. CIT(A) in dismissing the appeal by not condoning the delay in filing of the appeals and not deciding the appeals on merit.

3. First we take up ITA No.1804/PUN/2024 for assessment year 2014-15 as the lead case. Facts of the case, in brief, are that the assessee filed its original return of income on 01.12.2014 declaring total income of Rs.38,90,680/-. In this case a survey action u/s 133A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was conducted on 01.10.2019, during which the Ledger account of loans and advances given to various parties was found. Accordingly, the case of the assessee was reopened u/s 147 of the Act and notice u/s 148 of the Act was issued. The assessee in response to the same did not file any return of income. In response to the notice issued u/s 142(1) of the Act, the assessee made partial submission. The Assessing Officer completed the assessment u/s 144 r.w.s. 147 of the Act by making addition of Rs.62,58,007/- u/s 36(1)(iii) of the Act.

4. Subsequently, the Assessing Officer initiated penalty proceedings u/s 271(1)(c) of the Act. Rejecting the various explanations given by the assessee and observing that the assessee has furnished inaccurate particulars of income, the Assessing Officer levied penalty of Rs.20,30,410/- u/s 271(1)(c) of the Act for assessment year 2014-15.

5. Similarly, the Assessing Officer has levied penalty of Rs.33,19,245/- for assessment year 2015-16 and Rs.33,50,969/- for assessment year 2016-17 u/s 271(1)(c) of the Act vide ITA No.1815/PUN/2024 and ITA No.1816/PUN/2024. So far as the assessment year 2017-18 is concerned, the Assessing Officer levied the penalty of Rs.13,89,501/- u/s 270A of the Act and Rs.1,50,000/- u/s 271B of the IT Act, 1961. Further, in ITA No.1789/PUN/2024, the Assessing Officer has levied penalty of Rs.1,53,26,8235/- u/s 271(1)(c) of the IT Act, 1961.

6. Since all these appeals were filed with a delay of about 12 months, the Ld. CIT(A) rejecting the various explanations given by the assessee, dismissed these appeals as barred by limitation. While doing so, the Ld. CIT(A) relying on various decisions held that the delay however little it is, cannot be condoned in a routine manner and should be condoned only when it is for bonafide reasons and for sufficient cause.

7. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

8. The Ld. Counsel for the assessee at the outset drew the attention of the Bench to the order of the Ld. CIT(A) wherein the reason for such delay was explained. He submitted that the address of the previous Chartered Accountant was given in the Form No.35 for communication purposes. The concerned Chartered Accountant did not inform the assessee in time and subsequently the concerned Chartered Accountant demanded exorbitant fees for filing of the appeals for which the assessee was not in a position to pay such huge fees as demanded by the Chartered Accountant. Referring to the findings of the Ld. CIT(A), he submitted that the concerned Chartered Accountant wrongly advised the assessee that unless he deposits 20% of the outstanding demand, no appeal can be filed. This fact has already been brought to the notice of the Ld. CIT(A) and has also been referred by him at para 7 of his order. Further, when the appeals were pending before the CIT(A), the Assessing Officer has initiated penalty proceedings and levied the penalty u/s 271(1)(c) of the Act and the Ld. CIT(A) also without first deciding the issue on merit has dismissed the appeals filed against the penalty levied by the Assessing Officer on account of delay in filing the appeals. He submitted that the assessee will be in great difficulty, in case the appeal of the assessee is decided in its favour and the penalty is confirmed on account of delay in filing of the appeal. Referring to the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji & Ors. reported in 167 ITR 471 (SC) and various other decisions, he submitted that in the interest of justice, the delay in filing of these appeals before the Ld. CIT(A) should be directed to be condoned and the appeals be decided on merit.

9. The Ld. DR on the other hand strongly supported the orders of the Ld. CIT(A) in dismissing the appeals on account of delay in filing the appeals by about 12 months. He submitted that the Ld. CIT(A) has given justifiable reasons for not admitting the appeals on account of delay. Therefore, the order of the Ld. CIT(A) should be upheld and the grounds raised by the assessee be dismissed.

10. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the Ld. CIT(A) in the instant case dismissed the above six appeals on the ground that there was a delay of about 12 months in filing of these appeals by the assessee and the assessee could not explain any reasonable cause for such delay in filing of the appeals. He accordingly did not admit the appeals and dismissed all these appeals for filing beyond the statutory time limit without sufficient cause. It is the submission of the Ld. Counsel for the assessee that due to some communication gap between the assessee and his erstwhile Chartered Accountant, these appeals could not be filed in time. It is his submission that the concerned Chartered Accountant first neglected and thereafter wrongly advised the assessee that unless 20% of outstanding demand is paid, the appeals cannot be filed. It is also his submission that the assessee will be remediless in case the quantum appeal which is pending before the Ld. CIT(A) is decided in its favour and the penalty levied u/s 271(1)(c) of the Act is sustained on account of delay in filing of the appeal.

11. We find some force in the above arguments of the Ld. Counsel for the assessee. It is a peculiar case where the Assessing Officer has initiated penalty proceedings u/s 271(1)(c) of the Act and levied the penalty u/s 271(1)(c) of the Act when the quantum appeals are pending before the Ld. CIT(A). Further, the Ld. CIT(A) also without first deciding the quantum appeals, has dismissed the penalty appeals filed before him on account of delay. We visualize a situation where the quantum appeal is decided in favour of the assessee but the penalty still survives because the Assessing Officer has levied the penalty u/s 271(1)(c) or 270A of the I.T. Act, 1961 and the Ld. CIT(A) dismissed the appeal on account of delay in filing of the same. This cannot be the intention of the Legislature. In our opinion, the Ld. CIT(A) should have either decided the quantum appeal first and thereafter the penalty appeal or both simultaneously so as to overcome such peculiar situation. This, however, may not be applicable to penalty levied u/s 271B of the IT Act since it has no relevance for deciding the quantum appeal.

12. We find the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji & Ors. (supra) has held that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

Considering the totality of the facts of the case and in the interest of justice, we are of the considered opinion that the Ld. CIT(A) was not justified in dismissing the appeals on account of delay in filing of the appeals. We, therefore, set aside all these orders of the Ld. CIT(A) including the order confirming the penalty levied u/s 271B and restore the issue back to his file with a direction to condone the delay in filing of the appeals and decide all these appeals on merit as per fact and law after giving due opportunity of being heard to the assessee. The assessee is also hereby directed to participate in the appeal proceedings and submit the requisite details before the Ld. CIT(A) on the appointed date without seeking any adjournment under any pretext, failing which the Ld. CIT(A) is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee in all the appeals are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on 12th February, 2025.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 12th February, 2025
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, Pune
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	04.02.2025		Sr. PS/PS
2	Draft placed before author	06.02.2025		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			