

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.495 and 496/Nag./2024
(Assessment Year : 2020-21)

Panhera Gramin Bigarsheti
Sahakari Pat Sanstha Maryadit
Grampanchayat Building
Panherakhedi, Buldhana 443 001
PAN – AAAAP7879F

..... Appellant

v/s

Income Tax Officer
Ward-2, Khamgaon

..... Respondent

Assessee by : Smt. Veena Agrawal
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 04/02/2025

Date of Order – 25/02/2025

ORDER

PER V. DURGA RAO, J.M.

The present appeals by the assessee are emanating from the impugned orders of even date 14/06/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2020-21.

ITA no.495/Nag./2024
Assessee’s Appeal – A.Y. 2020-21

2. The assessee has raised following grounds:-

“1. Whether in the facts and circumstances of the case, the learned CIT(A) is justified in affirming the levying penalty of Rs. 30,000/-.

2. Whether in the facts and circumstances of the case, the learned CIT(A) is justified in affirming the penalty levied even where the appellant later participated in the proceeding.

3. Whether in the facts and circumstances of the case, the learned CIT(A) is justified in not condoning the delay in filing appeal.

4. Whether in the facts and circumstances of the case, the learned CIT(A) is justified in confirming the order passed by the learned AO in breach of principle of natural justice.

5. Assessee craves leave to add or alter any other ground during or at the time of appeal proceedings."

3. The matrix of the case is that, the assessee, during the assessment proceedings, failed to comply with three statutory notices issued by the Assessing Officer under section 142(1) of the Income Tax Act, 1961 ("the Act"). As a result of such non-compliant attitude of the assessee, the Assessing Officer levied penalty of ₹ 10,000 for each failure to comply with three statutory notices dated 06/12/2021, 16/12/2021 and 02/08/2022, which aggregated to ₹ 30,000 only. The assessee being aggrieved challenged the imposition of penalty of ₹ 30,000, before the first appellate authority.

4. Before the learned CIT(A), the assessee filed its appeal belatedly which was delayed by 396 days. Though the assessee filed application for condonation of delay, however, the reasons stated by the assessee were found to be neither sufficient nor convincing to be acceptable to the learned CIT(A) and hence the learned CIT(A), rejecting the application for condonation of delay, dismissed the assessee's appeal without going onto the merits

of the case. Once again, the assessee being aggrieved by the impugned order passed by the learned CIT(A), filed appeal before the Tribunal.

5. Before us also, once again the assessee filed second appeal that too with a delay of 29 days which proves that the assessee is a habitual defaulter. When the Bench posed a question to the learned Counsel, Smt. Veena Agrawal, appearing for the assessee, to give reason for such delay in filing this appeal before the Tribunal, she submitted that, within the office of the assessee, due to insufficient staff and in particular nobody is aware or possesses any knowledge of Income Tax proceedings and as a result of which the assessee failed to reply in time. She thus prayed that condoning the delay, the penalty of ₹ 30,000, be deleted. Keeping in view the overall facts and circumstances of the case and considering the request of the learned Counsel for the assessee as well as in the interest of natural justice, the delay of 29 days is hereby condoned. Insofar as levy of penalty of ₹ 30,000 is concerned, we find the submissions of the learned Counsel for the assessee in this regard are acceptable. Thus, we are of the opinion that the assessee is entitled to get relief by quashing the penalty order issued by the Assessing Officer levying penalty of ₹ 30,000. We order accordingly and hereby quash the penalty levied by the Assessing Officer.

6. In the result, assessee's appeal being ITA no.495/Nag./2024, is allowed.

7. The assessee has raised following grounds:-

"1. Whether in the facts and circumstances of the case, the learned CIT(A) is justified in affirming the levy of penalty of Rs 7,88,502/-.

2. Whether in the facts and circumstances of the case, the learned CIT(A) is justified in affirming the penalty where there is no under-reporting and misreporting of income.

3. Whether in the facts and circumstances of the case, the learned CIT(A) is justified in not condoning the delay in filing appeal.

4. Whether in the facts and circumstances of the case, the learned CIT(A) is justified in confirming the order passed by the learned AO in breach of principle of natural justice.

5. Assessee craves leave to add or alter any other ground during or at the time of appeal proceedings.

8. Delay of 29 days in filing this appeal has already been condoned vide Para-6 above.

9. This is a case of levy of penalty of ₹ 7,78,502, under section 270A of the Act.

10. It is the case of the Department that the Auditor in the 3CD report for the relevant assessment year had categorically stated that admissible amount of deduction under section 80P of the Act is only ₹ 11,72,904. Hence the excess claim of deduction under section 80P(2)(a)(i) of the Act amounting to ₹ 49,90,406 [i.e., ₹ 61,63,310 (-) ₹ 11,72,904] was disallowed. The learned Counsel for the assessee submitted that the assessee has claimed excess deduction of ₹ 49,90,406.

11. The learned Counsel for the assessee submitted before us that there was a mistake in the original audit report. Before us, the revised audit report

is placed on record. We find that the assessee has claimed deduction of ₹ 61,63,310, under section 80P(2)(a)(i) of the Act which is in accordance with Audit Report and consequently, we hold that the levy of penalty is liable to be quashed. Accordingly, we set aside the impugned order passed by the learned CIT(A) confirming levy of penalty of ₹ 7,78,502, under section 270A of the Act imposed by the Assessing Officer and hereby direct the Assessing Officer to delete the penalty as stated above. Thus, all the grounds raised by the assessee are allowed.

12. In the result, assessee's appeal being ITA no.496/Nag./2024, stands allowed.

13. To sum up, both the appeals by the assessee are allowed.

Order pronounced in the open Court on 25/02/2025

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 25/02/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur