

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE B.M. BIYANI, ACCOUNTANT MEMBER**  
**AND**  
**SHRI PARESH M JOSHI, JUDICIAL MEMBER**

**ITA No.809/Ind/2024 (AY: 2003-04)**

Raj Soya Export & Investment Limited, E-14, Saket Nagar, Indore <b>(PAN: AAECR8686C)</b>	<b>बनाम/ Vs.</b>	NFAC, Delhi
(Appellant)		(Revenue)
Assessee by	Shri Arpit Gaur, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	15.07.2025	
Date of Pronouncement	17.07.2025	

**आदेश / O R D E R**

**Per Paresh M Joshi, J.M:**

This is an appeal filed by the assessee Under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the “**Act**” for sake of **breivity**) before this Tribunal. The assessee is aggrieved by the order bearing Number ITBA/NFAC/S/250/2024-25/1058352847(1) dated **05.09.2024** passed by the Ld. CIT(A) u/s 250 of the Act which is hereinafter referred to as the “**Impugned order**”. The relevant Assessment Year is 2003-04 and the corresponding previous year period is from 01.04.2002 to 31.03.2003.

2.

**FACTUAL MATRIX**

2.1 That as and by way of an order made u/s 271(1)(c) of the Act, a penalty of Rs.10,77,294/- was imposed on the assessee company. This is an order of penalty u/s 271(1)(c) of the Act, which is hereinafter referred to as “impugned penalty order” which bears No.ITBA/PNL/F/ 271(1)(c)/2021-22/1039638513(1) and is dated 11.02.2022.

2.2 That the assessee being aggrieved by the aforesaid “impugned penalty order” prefers first appeal u/s 246A of the Act before Ld. CIT(A) who by the “impugned order” has dismissed the first appeal of the of the assessee herein. The core ground and reason for dismissal of the first appeal was as under:-

*“5.7 Based on the above trail of opportunities provided to the appellant, it appears that the assessee is not keen on pursuing the appeal. Accordingly, given that this office has not received any information or document so as to make a judgment based on merits, this office is left with no option but to confirm the penalty levied by the Ld. AO. Further, the appellant has merely filed an appeal but had not pursued the same by filing requisite details to substantiate his claim. Therefore, the levy of penalty as challenged in the Grounds of Appeal 2005-06 and in the Appeal Memo are hereby confirmed.*

*5.8 Accordingly, the appeal of the Appellant for AY 2003-04 is disposed by confirming the penalty order passed the Ld. A.O.”.*

**2.3** That the assessee being aggrieved by the “impugned order” has preferred the instant second appeal before this Tribunal and has raised following grounds of appeal in Form No.36 against the “impugned order” which are as under:-

*“1. That, the learned CIT(A) grossly erred, both on facts and in law, in passing the ex-parte order without giving proper and effective opportunity of being heard to the appellant.*

*2. That, without prejudice to the above, the learned CIT(A) grossly erred in not adjudicating the appeal on merits of the case.*

*3. That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the Order of 3 Penalty passed u/s. 271(1)(c) of the Income-Tax Act, 1961 by the Id. AO, imposing a penalty of Rs.10,77,294/- upon the appellant.*

*4. That, without prejudice to the above, the learned CIT(A) grossly erred in upholding the action of the AO for imposing the penalty without considering the material fact that the appellant had neither concealed nor furnished inaccurate particulars of its income for the year under consideration and therefore it was not liable for any penalty u/s. 271(1)(c) of the Act.*

*5. That, without prejudice to the above, the learned CIT(A) grossly erred in upholding the action of the AO for imposing the penalty qua the addition of Rs.29,31,412/- without considering the material fact that in the case of the appellant, no valid search under s.132 was ever carried out and framing assessment under 5.143(3)/ 1534 r.w.s. 254 of the Act and further, without considering the material fact that the appellant had not filed any return of income and in absence of a return of income, assessment cannot be made under s. 143(3)/ 153A r.w.s. 254 of the Act.*

*6. That, without prejudice to the above, the learned CIT(A) grossly erred in upholding the action of the AO for imposing the penalty qua the addition of Rs.26,64,920/- under the head 'Income from Trading in NBOT' without considering the material fact that for the year under consideration, the actual status of the appellant company was that of a defunct or dormant company and it had not carried out any income yielding activity and further, the learned CIT(A) grossly erred in upholding the action of the AO for imposing the penalty qua the addition of Rs.26,64,920/-, merely on guess work, surmises, and conjectures, without first confronting the appellant*

*with the alleged information in his possession despite appellant's making a specific request to this effect.*

*7. That, without prejudice to the above, the learned CIT(A) grossly erred in upholding the action of the AO for imposing the penalty 7 qua the addition of Rs.26.64,920/-on account of profit of the appellant on entire value of NBOT transactions, without any basis.*

*8. That, without prejudice to the above, the learned CIT(A) grossly erred in upholding the action of the AO for imposing the penalty 8 qua the addition of Rs.2,66,492/- under the head 'Unexplained investment in Margin Money', merely on guess work, surmises and conjectures.*

*9. That, without prejudice to the above, the learned CIT(A) as well as the Id. AO grossly erred, in law, in not considering the material fact that penalty proceedings are different from assessment proceedings and merely on the basis of certain finding in assessment proceedings, penalty u/s. 271(1)(c) cannot be imposed automatically.*

*10. That, the appellant further craves leave to add, alter or amend the foregoing ground of appeal as and when considered necessary”.*

### 3. Record of Hearing

3.1 The hearing in the matter took place before this Tribunal on 15.07.2025 when the Ld. AR for and on behalf of the assessee appeared before us and interalia contended that the **“impugned order”** is bad in law, illegal and not proper. The **“impugned order”** is in violation of the principles of natural justice as on **03.11.2024** had they received a notice for filing submission on or before **10.09.2024** whereas the **“impugned order”** is dated **05.09.2024**. Therefore the entire matter was prejudged before their submissions and the Ld. CIT(A) ought not to have passed

the **"impugned order"** but ought to have waited at least till **10.09.2024** for assessee to offer submission basis notice dated 03.11.2024 which has not happened and hurriedly the **"impugned order"** was passed. Hence the same should be set aside. Ld. DR appearing for the Revenue contended that basis notice dated **03.09.2024** he concurs with the submission of Ld. AR.

**4. Observations, findings & conclusions.**

**4.1** We now have to decide the legality, validity and the propriety of the **"Impugned Order"** basis records of the case and rival contentions canvassed before us.

**4.2** We have carefully perused the records of the case.

**4.3** We **basis** records of the case and after hearing and upon examining the contentions are of the considered opinion that the **"impugned order"** is illegal and bad in law in as much as the assessee was called upon to file submission vide further notice u/s 250 of the Act dated **03.09.2024** on or before **10.09.2024** whereas much before that on **05.09.2024** the **"impugned order"** was passed which is a **totally unfair in law**. Therefore we set

aside the “**impugned order**” and remand the case back to Ld. CIT(A) for adjudication and judgment on *denovo basis*.

5.

**Order**

**5.1** In view of the aforesaid the “**impugned order**” is set aside as and by way of remand to the file of Ld. CIT(A) on *denovo basis*.

**5.2** In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in open court on 17.07.2025.

Sd/-

Sd/-

**(B.M. BIYANI)**  
**ACCOUNTANT MEMBER**

**(PARESH M JOSHI)**  
**JUDICIAL MEMBER**

Indore

दिनांक/ Dated :17/07/2025

Dev/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order  
Senior Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore