

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

(HYBRID COURT)

**BEFORE SH. MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

I.T.A. Nos. 579 to 581/Asr/2024

Assessment Year: 2016-17

Sh. Adil Khurshid Bhat
(Prop. M/s Blue Bell Garments,
General Bus Stand Bus Stand,
Anantnag 192102, J & K.

[PAN: CGBPK 9274M]

(Appellant)

Vs.

Income Tax Officer,
Ward Udampur, UT
Jammu & Kashmir

(Respondent)

Appellant by : Sh. Mohd. Iqbal Untoo, C.A.

Respondent by : Sh. Charan Dass, Sr. D. R.

Date of Hearing : 17.07.2025

Date of Pronouncement : 18.08.2025

ORDER

Per Udayan Dasgupta, J.M.:

The above three appeals has been preferred by the assessee against the orders of the Id. CIT(A) NFAC, passed u/s 250 of the Act, 1961, *all dated 26/08/2024*, which has emanated from the order of the AO (AU), passed u/s 147 (r.w.s. 144B) dated 04/03/2024, passed u/s 271(1)(b) dated 27/06/2024 and passed u/s 271F dated 27/06/2024, respectively.

ITA 579/Asr/ 2024:

2. The grounds of appeal taken by the assessee in form 36 are as follows:

- “1. The action of the learned Commissioner of Income Tax (Appeals) - NFAC in passing the order under section 250 of the Income Tax Act, 1961 against the assessee, is unjust, arbitrary, without application of mind and violates the principles of natural justice and deserves to be quashed.*
- 2. That on the facts and circumstances of the case, the order passed by the learned CIT (A) under Section 250 and by the Ld. AO under section 147 of the Act is bad in the eyes of law, is against the judicial pronouncements already set as a precedent, having been passed without giving the assessee a proper opportunity of being heard and is in violation of principle of natural justice.*
- 3. That In view of the section 250(4) and 250(5) of the Act, the Ld CIT(A) has acted in contravention of the law while dismissing the case for non-prosecution, without discussing/adjudicating the merits of the case.*
- 4. BECAUSE, even after observing in the appellate order that the appeal has been taken up for decision on merits but the Ld. CIT(A) has not at all considered the grounds (Ground No.: 02 to (07).*
- 5. That the Id. CIT(A) had first condoned the delay in filing the appeal but strangely while deciding the appeal on merits (as claimed), had dismissed the appeal on the reason of limitation. In view of the same, the order of the Id. CIT(A) is not correct since he had already condoned the delay and therefore, he has no authority to dismiss the appeal on the ground of limitation while passing the final order.*
- 6. That the Ld. CIT(A) has acted in a contradictory manner while dismissing the appeal on the reason that "the reason for delay is not found to be tenable" while passing the order u/s 250 but has not pointed out the same issue during the appeal proceedings.*

7. *The ld. CIT(A) has erred in law and on facts in not appreciating that there was a reasonable cause in filing the appeal under section 246A belatedly.*
8. *Assessee craves right to add, alter or modify any grounds of appeal before or at the time of hearing of the appeal.”*

3. The brief facts emerging from records are that the assessee is engaged in the business of retail trade of *readymade garments* at *Anantanag, J & K*, and total credits in bank during FY 2015-16 amounted to **Rs. 1.25 crores** (*including cash deposit of Rs. 1.14 crores and balance Rs.10.99 lakhs being credit other than cash*). In absence of any return on record, proceedings were initiated u/s 147, and the assessee responded with a returned income of *Rs.3.42 lakhs* on a disclosed turnover of *Rs.1.19 crores*.

4. Though some submissions were filed in course of assessment proceedings but in absence of any tax audit report u/s 44AB of the Act, coupled with disclosed net profit rate of only 2.85%, the AO was not satisfied with the financials and explanations of the assessee and determined total income at Rs. 11.98 lakhs (*with an addition of Rs.8.56 lakhs*) which is under appeal.

5. The matter carried in appeal before the Ld. first appellate authority, being belated by seventeen days (*being filed on 24th April after expiry of due date on 7th April*), has been dismissed as non-maintainable, even though in *paragraph -9 of the order*, it is stated as *disposed on merits*.

6. In course of hearing before the tribunal the Ld AR of the assessee submitted that notice of hearing was never received by the assessee from the office of the Ld. first appellate authority and as such no representation was possible because notice was not issued in the *email as stated in form -35*. He submitted that the delay of *seventeen days* in filing the first appeal was because of his counsel who was fully occupied with religious rituals during *ramjan and eid*.

7. He further submitted that all documentary evidences and particulars including trade license, bank statements and other financials were filed before the AO and are on assessment record, but the same has not been considered and the appeal has not been adjudicated on merits on the grounds contained in the memo of appeal. He prays for a fresh opportunity of hearing for explaining his case to the satisfaction of the Ld. first appellate authority with necessary documents.

8. The ld. DR relied on the order of the first appellate authority but has no objection if the matter is remanded.

9. We have heard the rival contentions and seen the materials on record and we find that the issues contained in the grounds of appeal has not been decided on merits of the case on the basis of materials in assessment records, and the minor delay of seventeen days has been explained by the assessee.

10. As such in the interest of justice we remanded the matter to the files of the Ld. first appellate authority for adjudication on merits on the grounds contained in the memorandum of appeal and we direct the assessee to file all evidences and explanations in support of his case and to fully cooperate in appellate proceedings.

11. The assessee will be allowed reasonable opportunity of being heard.

12. In the result, the appeal is allowed for statistical purpose.

ITA No : 580/Asr/ 2024 (against penalty u/s 271(1)(b))

AND

ITA No : 581/Asr/ 2024 (against penalty u/s 271F)

13. Our observation in ITA No: 579/ ASR/ 2024 applies *mutatis mutandis* to these two appeals. The minor delay of only seven days in filing of both the appeals before first appellate authority is condoned. Since we have remanded the appeal in *ITA No: 579/ ASR/ 2024*, back to the Ld first appellate authority for fresh consideration , on merits of the case, we also remand these two penalty appeals back to the Ld first appellate authority to be heard afresh in tandem with the quantum appeal.

14. In the result, all the three appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 18.08.2025.

Sd/-
(Manoj Kumar Aggarwal)
Accountant Member

Sd/-
(Udayan Dasgupta)
Judicial Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T

True Copy
By Order