

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'A' BENCH, LUCKNOW**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA Nos.290 & 291/LKW/2025
A.Y. 2013-14

Kobsai Hospitalities Pvt. Ltd., 279/48, Pan Dariba, Charbagh, Lucknow-226004	vs.	The Income Tax Officer, Ward-4(1), Lucknow-New
PAN: AAECK8219Q		
(Appellant)		(Respondent)

Assessee by:	Sh. Rakesh Garg, Advocate
Revenue by:	Sh. Neeraj Kumar, CIT DR
Date of hearing:	07.08.2025
Date of pronouncement:	29.08.2025

ORDER

PER NIKHIL CHOUDHARY, A.M.:

These two appeals have been filed by the assessee against the separate orders of the Id. CIT(A), NFAC for the assessment year 2013-14 on 29.01.2025 and 22.03.2025, dismissing the appeals of the assessee against the orders of the Id. AO passed on 28.03.2022, under section 144 of the Income Tax Act and on 26.09.2022, under section 271(1)(c) of the Income Tax Act, 1961. As both the appeals relate to the same assessment year and the penalty proceedings emanate out of the assessment made, these two appeals are being taken up together for the sake of convenience. The grounds of appeal, in both the appeals are as under: -

ITA No.290/LKW/2025

"01. Because the CIT(A), NFAC, has erred on facts and in law in dismissing the appeal without considering the facts and circumstances of the case, and the explanation furnished for the delay in filing the appeal, the order passed by the CIT(A), NFAC, is bad in law, be set aside.

02. Because the CIT(A), NFAC, has failed to appreciate the explanation furnished by the assessee with respect to delay in filing the appeal, the assessee being prevented by sufficient and reasonable cause, beyond his control, being totally dependent upon his legal advisor, stands nothing to gain by not filing the appeal in time, the CIT(A), NFAC, was not justified in not condoning the delay, the order passed by the CIT(A), NFAC, be set aside.

03. Because the entire proceedings-initiated u/s.148 are devoid of material or reasons, there being no reason to believe, the ground on which the reopening has been initiated is contrary to the facts, all being without jurisdiction, the entire proceedings are void-ab-initio be quashed.

04. Because the authorities below have failed to appreciate that there being no failure on the part of the assessee, to disclose the relevant facts for the purpose of assessment, which all facts are apparent from the Balance Sheet itself, filed alongwith the return of income, the provisions of section 148 are not applicable.

05. Because the CIT(A), NFAC, has failed to pass an order on the facts and the merits of the appeal, which ought to have done in spite of the fact that appeal was filed delayed, same having not been done, the order passed by the CIT(A), NFAC, be set aside.

06. Because in any case, the order passed by the CIT(A), NFAC, is contrary to the principles of natural justice, provisions of the law, the same be set aside.

07. Because without prejudice to the above grounds of appeal, the addition of Rs.4,66,95,000/- made under section 69 of the Act by the Assessing Officer on account of unexplained investment in the properties, is contrary to the facts, bad in law be deleted.

08. Because the authorities below have failed to appreciate, that it is a case of Limited Company where the accounts are maintained and tax audited, the entire investment in property having been made through banking channels, recorded in the books of account, the provisions of section 69 are not applicable, the addition made on account of unexplained investment being contrary to the provisions of law, the same be deleted.”

ITA No.291/LKW/2025

“01. Because the CIT(A), NFAC, has erred on facts and in law in upholding the levy of penalty of Rs.1,51,50,193/-under section 271(1)(c) of the Act, which penalty is bad in law, in as much as, there being no violation of provisions of section 271(1)(c), the penalty imposed be deleted.

02. Because there being no specific charge either of concealment of particulars of income or furnishing of inaccurate particulars of income, which is sign qua non, the penalty imposed is bad in law be deleted.

03. Because the authorities below have failed to appreciate, that the entire addition made in the assessment framed under section 148 r.w.s. 144 with respect to unexplained investment in purchase of immovable property, has originated from the books of account, maintained in the regular course of business, which have been audited, the same neither being unexplained nor undisclosed, the provisions of section 69 are not applicable, the penalty imposed is bad in law, misconceived be deleted.

04. Because the CIT(A), NFAC, has failed to appreciate that the quantum appeal is pending, the matter being subjudice, the penalty imposed is in violation of the provisions of section 275(1)(a), the same is bad in law be deleted.

05. Because the assessment framed u/s.148 r.w.s. 144 itself is subjudice and the validity of the same is in doubt, the penalty imposed Rs.1,51,50,193/-is misconceived, the order imposing the penalty be quashed.”

2. The facts of the case are that the assessee filed a return of income under section 139 of the Income Tax Act for the assessment year 2013-14 on 24.03.2014 showing a loss of Rs.1,73,963/-. Information was received from the DIT (I&CI), Lucknow, that the assessee had purchased an immovable property of Rs.4,31,50,000/- of which the market value was Rs.5,06,41,406/-, and stamp duty of Rs.35,45,500/- had been paid on it. To examine the source of investment of Rs.4,66,95,000/-, the ld. AO issued a notice under section 148. The ld. AO, thereafter issued three notices under section 142(1) to the assessee requesting him to submit copies of balance-sheet, profit & loss account, capital account, computation of income, audit report, bank statements highlighting the payments and loan confirmation, but there was no response made by the assessee. Therefore, considering the non-responsiveness, a notice under section 144 of the Act was issued to the assessee asking him why its assessment should not be completed in a best judgment manner. In the absence of any reply from the assessee, a draft assessment order was sent to the assessee proposing to add back the amount invested in the purchase of land and in payment of stamp duty, as unexplained investment under section 69, but because no response was received to the same, subsequently, the ld. AO finalized the assessment along the lines proposed in the draft

assessment order and made an addition of Rs.4,66,95,000/- to the returned income of the assessee.

3. Aggrieved with the said assessment order, the assessee filed an appeal with the Id. CIT(A), NFAC. Before the Id. CIT(A), NFAC, it was submitted that the assessee did not receive any of the notices issued by the Id. AO because the taxation matters were being looked after by a Chartered Accountant firm, whose partners had developed differences among themselves and the concerned partner who was looking after the assessee's accounts had not informed the assessee regarding issue of any notices. It was submitted that the matter had already been verified by the ITO (I&CI) and also the ITO, 4(1) with whom the jurisdiction of the assessee's case lay, on account of, '*verification of information regarding investment in purchase of immovable property*' and in response to these verification enquiries, the assessee had submitted all the details regarding the investment made by it along with relevant annexures such as the copy of the bank account, copies of income tax return, balance-sheet containing details of loans and share application money that had been used to finance the purchase, copies of confirmation letter from persons from whom unsecured loans had been received etc.. The details of the payment made for the purchase of the property and the details of the sources of such payments were submitted to the Id. CIT(A) and it was prayed, that the company had all the details in its possession, which it could have submitted to the Id. AO, had it been made aware of the issue of notices. Since, the two partners of the C.A. firm were bickering among themselves and in the process of closing down the firm, the person looking after the taxation work of the assessee company had not informed it about the issue of notices. Had the assessee been informed, it could have submitted all the details to the Id. AO. It, therefore, requested permission for condonation of delay in filing the appeal on this count and also requested permission to furnish the necessary evidences to prove that the investment in the property was out of legitimate sources. However, the Id. CIT(A) did not accept

the plea of the assessee. He held that it was for the assessee to maintain contact with its counsels and keep track of its case and various courts have held, that the assessee could not absolve himself of the responsibility of making compliance by shifting the burden to the tax consultants by abdicating its primary responsibility of keeping track of the proceedings. Therefore, he dismissed the appeal of the assessee and confirmed the additions made by the ld. AO.

4. Subsequent to the passing of the assessment order, the ld. AO also issued a notice under section 271(1)(c) asking the assessee to explain why penalty should not be levied for concealment of income. The ld. AO records that three notices were issued to the assessee, but the assessee did not make any compliance to the said notices. The ld. AO also observed that the assessee had not filed any appeal in respect of the assessment before the appellate authority and therefore, he proceeded to levy the penalty under section 271(1)(c) of Rs.1,51,50,193/-.

5. Aggrieved by such levy of penalty, the assessee went in appeal to the ld. CIT(A), NFAC. Once again, the same arguments were presented i.e. that the investment in the purchase of property and payment of stamp duty had been made out of explained sources of the company's income and had the company been aware of the issue of notices, it could have furnished all the information before the ld. AO. However, due to the dispute between the partners of the C.A. firm, the assessee had not been informed about the notices that were received by the counsels on their email ID and therefore it could not make compliance. It was submitted that the evidence in support of these transactions was being uploaded and on going through them, it could be seen that the assessee was in a position to explain the investments, therefore, additions should not be made and penalty was not leviable. Once again, the ld. CIT(A) did not accept the submissions of the assessee, holding that the primary responsibility to keep track of its own proceedings vested with the assessee and not the tax consultants. Therefore, the ld. CIT(A) dismissed the appeals of the assessee.

6. The assessee is aggrieved at this summary disposal of both its appeals by the Id. CIT(A) and has accordingly come in appeal before us. Sh. Rakesh Garg, Advocate (hereinafter known as the Id. AR) appearing before us, submitted that the assessee had already submitted the necessary documents relating to the matter during verification conducted by the I&CI and also by the jurisdictional AO. This demonstrated that the assessee had all the documents in its possession that would establish that the investments were not unexplained. Therefore, there was no reason to assume that the assessee deliberately made non-compliance before the Id. AO, in either the assessment or during the course of penalty proceedings. Had the assessee been aware of the notices, it would have submitted these documents before the Id. AO also. However, since the assessee was not made aware of the same by the bickering partners of the C.A. firm at whose email address these notices had been issued, it was not in a position to make compliance. It was submitted that the Id. CIT(A) was not justified in refusing to consider the assessee's arguments and instead applying a theoretical argument to reject it. It was submitted that even today, if the assessee was given the opportunity, it would produce all the documents and the replies before the Id. AO to demonstrate that no part of the investment made in the purchase of the property or payment of stamp duty was unexplained. Accordingly, it was prayed that the matter may be sent back to the Id. AO for providing this opportunity to the assessee.

7. On the other hand, Sh. Neeraj Kumar, CIT DR (hereinafter referred to as the 'Id. CIT DR') opposed the plea of the Id. AR. He submitted that at every stage, the assessee had not complied with the notices. The Id. CIT(A) was right in refusing to consider the plea that it was on account of dispute in the C.A. firm that the matter could not be attended to, because it was the responsibility of the assessee to keep track of its case. He, therefore, prayed that the addition and the penalty may be confirmed.

8. We have duly considered the facts and circumstances of the case. We observe that in verification proceedings by the ITO, (I&CI) and the jurisdiction AO, the assessee

had furnished all the documents and replies that it considered necessary, to explain the investment in the said property. There is, therefore, no reason to assume, that had the assessee known about the notices, it would not have submitted these replies or the documentary evidences in support of the same to the ld. AO. This gives credence to the fact that the assessee may not be aware of the fact of the issuance of these notices, because the email ID that had been provided, was that of its Chartered Accountants, who were bickering among themselves and omitted to inform the assessee with regard to the same. This view is further strengthened by the fact that even after the passing of the assessment order, there was a delay in the filing of the appeal and also no compliance was made during penalty proceedings. Usually, an assessee evading filing replies to notices, would take prompt action to file an appeal against an assessment order and defend its case in penalty proceedings. The very fact that the assessee did not do so, indicates that it was not aware of the existence of the proceedings. In the circumstances, we hold that it was not appropriate for the ld. CIT(A) to have rejected the explanation submitted by the assessee and refuse to consider the matter on its merits. Therefore, in the interest of justice, we restore the matter back to the file of the ld. AO with a direction to the assessee to produce its explanation and all evidences in support thereof before the ld. AO, so that the ld. AO may satisfy himself with regard to the claims made by the assessee and thereafter take action as per law. As the assessment order is being restored to the file of the ld. AO, the penalty based upon such order cannot stand. We, therefore, quash the penalty proceedings as being premature with liberty to the Department to initiate them afresh, if it comes to any findings during the course of assessment, that there has been any concealment or furnishing of inaccurate particulars of income. As the assessment order has been restored to the file of the ld. AO, ITA No.290/LKW/2025 is held to be allowed for statistical purposes, while the appeal with regard to the penalty, which has been quashed, is held to be allowed.

9. In the result, ITA No.290/LKW/2025 is allowed for statistical purposes while ITA No. 291/LKW/2025 is allowed.

Order pronounced on 29.08.2025 in the open Court.

Sd/-

[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED: 29/08/2025

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Copy forwarded to:

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

Sd/-

[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

By order
Sr. P.S.