

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
and  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.4194/DEL/2025  
(Assessment Year: 2018-19)**

Gaurav Kataria,  
H.No.1C, Near Canara Bank,  
VPO Basai,  
Grugaon – 122 001 (Haryana).

vs.

Pr.CIT,  
Faridabad.

**(PAN : ECJPK3606R)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Mahfuzur Rahman, CA  
REVENUE BY : Shri Jitender Singh, CIT DR

Date of Hearing : 11.11.2025  
Date of Order : 11.11.2025

**ORDER**

**PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :**

1. The assessee has filed appeal against the order of the Learned Pr.Commissioner of Income Tax (PCIT), Faridbad ["Ld. PCIT", for short] dated 24.01.2025 for the Assessment Year 2018-19.
2. At the time of hearing, ld. AR of the assessee submitted that the assessee has filed the appeal with a delay of 92 days from the date of appellate order. He submitted that the said order was given to Chartered Accountant, Shri Mahfuzur Rahman on 07.03.2025 for preparing the

appeal and filing before the ITAT but the same was not filed by the Id. AR. On enquiry from the chartered accountant, it was informed that the appeal could not be filed being his office was completely occupied in representing assessment proceedings of various clients before Assessing Officer during the months of February and March 2025 and one of their staff kept the documents for preparation of appeal and kept in his drawer and forgot to file the appeal. Accordingly, he submitted that there was an inadvertent mistake on the part of the Chartered Accountant filing the appeal and the assessee does not stand to gain by filing the appeal belatedly and since the delay is not intentional, he prayed that the delay may be condoned and heard the appeal.

3. On the other hand, Id. DR of the Revenue objected to the above facts on record.
4. We have heard both the counsels on the issue of condonation of delay. In our considered opinion, there was a reasonable cause for the delay in filing the appeal. Therefore, we condone the delay in filing the appeal before the Tribunal.
5. Brief facts of the case are, during section 263 proceedings, Id. PCIT observed that since the assessee was having taxable income and has not filed ITR for the period under consideration, proceedings u/s 147 of the Income-tax Act, 1961 (for short 'the Act') were initiated. The assessee

has filed ITR for AY. 2018-19 in response to notice u/s 148 of the Act declaring total income of Rs.21,10,480/- and has paid income tax of Rs.7,25,907/-. The assessment in this case was completed u/s 147 read with section 144B of the Act vide order dated 22.02.2023 by the NFAC, Delhi at returned income of Rs.21,10,480/-. The Assessing Officer has completed the assessment proceedings by accepting the returned income filed u/s 148 of the Act but failed to initiate penalty proceedings u/s 270A of the Act. As the assessee has not filed his original return of income for the AY 2018-19 and has filed return of income in response to notice u/s 148 of the Act only and paid taxes of Rs.7,25,907/-, therefore, the penalty proceedings u/s 270A of the Act needs to be initiated.

6. On the basis of the above stated discrepancies, ld. PCIT observed that the AO has failed to initiate penalty proceeding u/s 270A of the Act and penalty has to be initiated u/s 270A where there is under-reporting and misreporting of income in the assessment order passed u/s 147 read with section 144B of the Act, is without proper application of mind, knowledge of provisions of the Act, latest information etc.; and not initiation of penalty u/s 270A prima facie appear to be erroneous and prejudicial to the interest of revenue. Hence, ld. PCIT observed that the assessment order is erroneous insofar as prejudicial to the interest of the Revenue

7. Accordingly, a detailed show cause notice u/s 263 of the Act dated 27.08.2024 was sent to the assessee through speed post as well as through email and was given an opportunity to explain as to why the assessment order dated 22.02.2023 passed by the NFAC, Delhi should not be set aside and a fresh assessment be directed. In response, assessee filed detailed submissions before the Id. PCIT which were reproduced at pages 3 to 10 of the impugned order.
8. After going through the reply of the assessee, Id. PCIT observed that the contention of the assessee is not tenable as the assessee has not brought any new facts or judgements. Further Id. PCIT, after relying on various case laws, held that assessment order passed u/s 147 read with section 144B of the Act is erroneous and prejudicial to the interest of revenue. Consequently, in exercise of the power conferred in Section 263 of the Act, Id. PCIT set aside the said assessment order dated 22.02.2023, only to the extent i.e. relating to not initiation of penalty under the provisions and directed the Assessing Officer to initiate the penalty under section 270A of the Income Tax Act, 1961 on the assessed income.
9. Aggrieved assessee is in appeal before us raising following grounds of appeal :-
  - “1. That having regard to the facts and circumstances of the case and in law, the Ld. Principal Commissioner of Income Tax erred both in law and on facts in invoking the provisions of Section 263 of the Income Tax Act, 1961

and holding the assessment order dated 22.02.2023 passed u/s 147 r.w.s. 144B of the Act for AY. 2018-19 as erroneous and prejudicial to the interest of revenue.

3. That having regard to the facts and circumstances of the case an in law, the Ld. Principal Commissioner of Income-Tax erred in directing the Assessing Officer to initiate penalty proceedings under section 270A of the Income Tax Act, 1961 despite the fact that the Assessing Officer, in his considered discretion, chose not to initiate such proceedings in the assessment order.

3. That having regard to the facts and circumstances of the case and in law, the Principal Commissioner of Income Tax erred in assuming that mere difference in income between the return filed under section 148 and the non-filing of original return automatically mandates initiation of penalty under section 270A, without appreciating the bona-fide and voluntary compliance made by the assessee.

4. That having regard to the facts and circumstances of the case and in law, the Ld Principal Commissioner of Income Tax erred both in law and on facts in denying the discretionary power of the Ld. Assessing Officer for not initiating the penalty proceedings, where the Ld. Assessing Officer, NaFAC was satisfied that this case is not fit for levy of penalty.”

10. At the time of hearing, ld. AR of the assessee brought to our notice relevant facts on record and brought to our notice the detailed submissions made before the ld. PCIT, which is reproduced at pages 3 to 10 of the impugned order. He submitted that the proceedings u/s 270A is independent of assessment proceedings.
11. On the other hand, ld. DR of the Revenue relied on the findings of the ld. PCIT.
12. Considered the rival submissions and material placed on record. We observed that ld. PCIT has initiated the proceedings u/s 263 based on the observation that Assessing Officer has not initiated the penalty

proceedings even though the assessee has not filed his return of income u/s 139(1) but filed only upon issue of notice u/s 148. We observed that this is the first return of income filed by the assessee and has properly complied to the notice issued u/s 148 and paid the relevant taxes. The Assessing Officer has accepted the relevant return of income filed and not made any further additions. Non initiation of penalty proceedings will not make the assessment bad in law. We noticed that there is no difference to the income declared and income assessed in this case. Therefore, neither the assessment order is erroneous nor it is prejudicial to the interest of Revenue. Hence, we are inclined to set aside the order with the observation that it does not attract the provisions of section 263 of the Act.

13. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open court on this 11<sup>th</sup> day of November, 2025  
after the conclusion of the hearing.**

**Sd/-  
(SATBEER SINGH GODARA)  
JUDICIAL MEMBER**

**sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

**Dated: 29.12.2025  
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI