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

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

ITA No.525/LKW/2025
A.Y. 2017-18

Sharda Devi, W/o Shyam Singh, Near Zila Chikitsalaya, Purani Basti, Basti-2721	vs.	The Income Tax Officer, Basti-New
PAN: AUSPD8424B		
(Appellant)		(Respondent)

Assessee by:	None
Revenue by:	Sh. Amit Kumar, DR
Date of hearing:	27.10.2025
Date of pronouncement:	13.01.2026

O R D E R

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the assessee against the order of the ld. CIT(A), NFAC dated 16.01.2025 wherein the ld. CIT(A) has dismissed the appeal of the assessee against the order of penalty passed by the ld. AO dated 17.01.2022 in *limine* without going into the merits of the case. The grounds of appeal are as under:-

> *"01. Because the CIT(A) has erred on facts and in law in upholding the addition of Rs.8,11,663/- being cash deposited in bank during demonetization period under section 69A r.w.s. 115BBE of the Act, which addition is contrary to facts, bad in law be deleted.*
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> *02. Because the CIT(A) has failed to appreciate that the assessee is carrying on the business of household items, such as, business of Achar, Kuchry (Grocery) declaring profit under section 44AD @ 8% wherein the provisions of section 68 and section 69 are not applicable, the addition of Rs.8,11,663/- made by the AO and upheld by the CIT(A) is contrary to the provisions of law be deleted.*
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> *03. Because the explanation furnished by the assessee has not been found false of untrue, the addition of Rs.8,11,663/- made by the AO and upheld by the CIT(A) be deleted."*

2. The facts of the case are that the Department received information that the assessee had made cash deposits to the extent of Rs. 11 Lac during the demonetization period (out of total credits of Rs. 11,15,797/- during the financial year 2016-17) in Urban Co-Operative Bank Ltd., even though she had not filed any return of income for the assessment year 2017-18 on or before the end of the assessment year. Therefore, the case was reopened under section 147. The ld. AO noted that the assessee had deposited a sum of Rs. 11 Lacs over five days during the demonetization period and other than that, no deposits or withdrawals had been made by the assessee. In response to notices issued, the assessee filed a reply stating that she had filed her ITR for the A.Y. 2017-18 under the PAN No. AGPPD3367C and she was engaged in retail business of Achar, Papad and Kachri. She also claimed the benefit of section 44AD of the Income Tax Act showing receipts from any other mode at Rs. 9,88,589/- from trading in dairy. The ld. AO noticed a contradiction in the nature of business / occupation filed by the assessee. He noticed that the nature of business did not have nexus with the replies filed by the assessee. The assessee had neither shown the relevant bank account number nor mentioned the turnover relating to deposits, in her ITR. Thereafter, the assessee submitted that since 2012-13, she was filing ITR under the PAN No. AGPPD3367C but by mistake she had quoted another PAN No. AUSPD8424B in her bank account with Urban Co-Operative Bank, Basti and deposited Rs. 11 Lacs in the bank as the sale proceeds of business. The ld. AO after examining the matter held that it was reasonable to suppose that cash in hand of Rs. 2,88,337/- was explained and the remaining amount of Rs. 8,11,663/- deposited in the aforesaid bank account during the demonetization was unexplained money under section 69A. He, therefore, brought the same to tax @ 60% under section 115BBE. He also added back the interest received on these deposits of Rs. 15,797/- as income from other sources. Subsequently, the ld. AO also initiated penalty proceedings under section 271AAC(1) of the Act and issued a show cause notice. The assessee did not comply with the various notices issued by the ld. AO, therefore, the ld. AO held that since the assessee had not been able to furnish any cogent explanation with regard

to cash deposits amounting to Rs. 11 Lacs and the AO had made an addition of Rs. 8,11,663/- under section 69A of the Act, thus section 271AAC (1) of the Act was applicable and he accordingly proceeded to levy penalty of Rs. 62,701/- on the assessee, being 10% of the tax payable under section 115BBE.

3. Aggrieved with the said order, the assessee filed an appeal before the ld. NFAC on 28.08.2022. On 28.08.2022, the ld. CIT(A) found that there was a delay of 193 days in the filing of this appeal. After considering the decision of the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 2522/2022 dated 9.05.2022, the ld. CIT(A) came to the conclusion that the period of delay in filing of the appeal was 182 days. The assessee submitted that the reason for delay was that the order under section 271AAC (1) and the demand notice were not received by her and she was not aware of the penalty proceedings. However, the ld. CIT(A) did not find this ground to be acceptable. He pointed out that the assessee was provided various opportunities of being heard by issue of notices on various dates. Some compliance had been made by the assessee but he held that for condoning the delay, it must be proved beyond the shadow of doubt that the assessee was diligent and was not guilty of negligence whatsoever. He relied upon the decision of the Hon'ble Supreme Court in the case of Ram Lal vs. Rewa Coal Fields Ltd., AIR 196 SC 361 to state that day by day delay had to be explained and no party was entitled to condonation of delay as a matter of right. The proof of a sufficient cause was a condition precedent for the exercise of discretional jurisdiction vested in the Court. He also placed reliance upon the decision of the Hon'ble Supreme Court in the case of Chief Post Master General and Ors vs. Living Media India Limited (2012) 348 ITR 7 (SC) wherein it had been held that where the conduct of the assessee shows the neglect of its own right for a long time in preferring appeals then judicial authorities were not required to enquire into belated and stale claims on the grounds of equity. The ld. CIT(A) quoted from the decision of the ITAT Delhi in the case of SRF Limited (Order dated 14.11.2014) wherein the ITAT had held that unless there was sufficient cause, the extraordinary delay could not be condoned and if it were to be so then the provisions of prescribed limitation period would

become otiose and infructuous. The ld. CIT(A) also cited the decision of the Hon'ble Supreme Court in the case of Rajnish Kumar & Ors vs. Ved Prakash in SLP (Civil) Nos. 935-936 of 2021 dated 21.11.2024, wherein the Court had held that it was the duty of a litigant to be vigilant of his own rights and the negligence of the lawyer could not be a ground to condone long and inordinate delay. Finally, the ld. CIT(A) cited the decision of the Hon'ble Supreme Court in the case of Pathapati Subba Reddy by LRs & Ors vs. The Special Deputy Collector (LA) in Special Leave Petition (Civil) No. 31248 of 2018 dated 8.04.2024, wherein the Hon'ble Court had held that when a litigant applied to condone the delay in the filing of the appeal then they should also explain why the appeal was not filed within the limitation period itself. The ld. CIT(A) held that the appellant had filed appeal against the quantum assessment order and therefore, ought to have been well aware of the penalty proceedings as the same was mentioned in the assessment order passed by the ld. AO. This demonstrated that the assessee was aware of the ongoing proceedings and could have checked the details, but instead chose to be negligent. He held the delay of 182 days to be extraordinary and accordingly refused to condone the same. The appeal was accordingly dismissed without going into the merits of the case.

4. Aggrieved by this order, the assessee filed an appeal before us. On the appointed date of hearing, nobody was present on behalf of the assessee. Sh. Amit Kumar, Sr. DR (hereinafter referred to as the ld. DR) assisted the Bench in the hearing of the case. Ld. DR submitted that despite being aware of the initiation of the penalty, the assessee had neither appeared before the ld. AO in penalty proceedings, nor filed the appeal against it on time. Accordingly, there was justified reasons for the ld. CIT(A) to deny the assessee the benefit of condonation and he was therefore, justified in dismissing the appeal in *limine.* Sh. Amit Kumar, Sr. DR pointed out that the assessee had not been able to show that the deposits made into her account were explained and therefore, even otherwise, the ld. AO was justified in levying penalty under section 271AAC(1) against the assessee.

5. We have duly considered the facts and circumstances of the case. We noticed that the assessee had filed an appeal against the assessment order on 29.10.2021 which remained pending before the ld. CIT(A) even while the penalty proceedings came to be finalized. We note that since the penalty under section 271AAC(1) depends upon an amount being charged to tax under section 115BBE, the penalty against the same can only be levied once the addition on account of which such tax is levied is settled in the Revenue's favour. We note from the Form No. 36, that the assessee had filed an appeal against the addition made under section 69A on 29.10.2021 and among the grounds that the assessee had preferred was that, the provisions of section 68 and 69 were not available in cases under section 44AB and since the assessee had declared her income under the said section, she could not be levied with the burden of tax under those sections. The ld. AO does not appear to have considered this aspect while passing the penalty order. We further note that the computation of addition to be made under section 69A of the Act follows a rule of thumb approach which does not lead to a finding of any money being unexplained under section 69A, but in rather an addition that is based upon the ld. AO's subjective satisfaction. It is appropriate that in such matters, before the penalty is levied, the decision of the higher authorities on the sustainability of the addition be awaited. We note that the appeal against the assessment proceedings was still pending on the date of levy of the penalty order and had the assessee received the notice, it could have well forestalled the penalty by seeking it to keep in abeyance until the disposal of the appeal order, which the AO would have been obliged to do. Keeping that in mind, there appears to be reason to believe the assessee when she says that she did not receive a copy of the notice. It also explains the delay in the filing of the appeal because if the assessee was not familiar with the portal, she would not be aware of the penalty order passed and uploaded on the portal. In the circumstances, her plea that the delay of appeal was occasioned by a lack of awareness of the penalty order cannot be dismissed as negligence because the assessee had nothing to gain from such negligence. The Hon'ble Supreme Court in the case of Collector of Land Acquisition

vs. MST. Katiji (1987) 167 ITR 471 (SC) has held that wherever possible an appeal should be heard on its merits rather than allowing technical grounds to defeat the cause of justice. In keeping with the spirit of the said order, we deem it fit to restore the matter back to the file of the ld. AO so that the ld. AO may take a considered view on the levy of the penalty after taking into account the result of the appeal against the quantum.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 13.01.2026 in the Open Court.

Sd/-	***Sd/-***
[SUDHANSHU SRIVASTAVA]	**[NIKHIL CHOUDHARY]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: 13/01/2026

Copy forwarded to:
1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.