

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2458/PUN/2025
निर्धारण वर्ष / Assessment Year : 2015-16

Soni Somani Infrastructure, 560/31, South Sadar Bazar, Vinayak Nagar, Solapur- 413003. PAN : ABVFS4209B	Vs.	ACIT, Circle-1, Solapur.
Appellant		Respondent

Assessee by : Shri Shriniwas G. Bhutada
Shri Vishnu D. Bhutada
Revenue by : Smt. Sailee Dhole
Date of hearing : 08.01.2026
Date of pronouncement : 28.01.2026

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 27.08.2025 passed by Ld. CIT(A)/NFAC for the assessment year 2015-16.

2. The appellant has raised the following grounds of appeal :-

"Based on the facts and in the circumstances of the case, the appellant respectfully craves leave to prefer an appeal under section 253(1)(a) of the Income-tax Act, 1961 (hereinafter referred to as the 'Act'), against the order dated 27th Aug 2025 (hereinafter referred to as the impugned order) passed by the Commissioner of Income Tax (Appeal)- NFAC

(hereinafter referred to as the CITA) on the following grounds, which are independent of and without prejudice to each other:

On the facts and circumstances of the case and in law, the Ld. CIT has:-

- 1) *The Learned CIT A failed to appreciate that appellant is engaged in the business of construction activity follows mercantile system of accounting in-lieu-of-percentage of completion method for its construction project provides for expenditure of common amenities determined scientifically on the basis of certificate of civil engineer/architect and said expenditure can't be equated with the term furnishing of inaccurate particulars of income or concealment of income.*
- 2) *The Ld. CIT erred in not appreciating the fact that activity of construction continues for more than one financial year as going concern and provisions for expenditure were actually incurred in subsequent financial years and such actual expenditure were never disallowed in subsequent year/s results the levy of penalty unjustified and warranted.*
- 3) *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

3. The appellant has raised the following additional grounds of appeal :-

- “1. *That the appellant has filed the present appeal before the Hon'ble Tribunal against the order dated 27.08.2025 passed by the learned Commissioner of Income Tax (Appeals), NFAC, under section 250 of the Income-tax Act, 1961 confirming the levy of penalty under section 271(1)(c) of the Act.*
2. *That during the course of further examination of records and on legal advice, the appellant has noticed certain pure questions of law going to the root of the validity and jurisdiction of the penalty proceedings, which were not specifically raised in the original grounds of appeal filed along with Form No. 36.*
3. *That the additional grounds now sought to be raised:*
 - *arise from facts already on record;*
 - *do not require any fresh investigation of facts;*
 - *are purely legal in nature*

The appellant, therefore, prays that the Hon'ble Tribunal may kindly admit the following Additional Grounds of Appeal.

The appellant humbly prays that the Hon'ble Tribunal may kindly admit the additional grounds of appeal annexed herewith and decide the appeal in accordance with law.”

4. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business as builder and developer. In the case of the assessee, assessment order u/s 143(3) of the IT Act was passed on 30.12.2017 wherein income was determined at Rs.1,53,94,900/- as against the income returned by the assessee at Rs.56,81,371/- and penalty proceedings u/s 271(1)(c) of the IT Act were also initiated for furnishing inaccurate particulars of income. In penalty proceedings, after considering the reply of the assessee, the Assessing Officer vide order dated 02.03.2020, levied penalty of Rs.34,77,180/- u/s 271(1)(c) of the IT Act.
5. Being aggrieved with the above penalty order, the assessee preferred an appeal before Ld. CIT(A)/NFAC. Since the assessee remained absent before Ld. CIT(A)/NFAC & the appeal was furnished belatedly i.e. with the delay of 3 years 7 months and 18 days, Ld. CIT(A)/NFAC dismissed it without admitting the same for adjudication.

6. It is the above order against which the assessee is in appeal before this Tribunal.

7. We have heard Ld. counsels from both the sides and perused the material available on record including the copy of case laws furnished by the assessee as well as copy of the Tribunal's order furnished by Ld. DR which was passed in the quantum case of the assessee for the year under consideration. In this regard, we find that admittedly the appeal before Ld. CIT(A)/NFAC was furnished belatedly i.e. with a huge delay of 3 years 7 months and 18 days & the assessee not responded to the notices of hearing issued by Ld. CIT(A)/NFAC, consequently the appeal filed by the assessee was dismissed by Ld. CIT(A)/NFAC. In this regard, it was the argument of Ld. counsel of the assessee that the period of delay in filing the appeal includes Covid pandemic period, which was directed to be excluded for the purposes of calculation of various limitations including filing of appeal. In this regard, the *suo moto* order passed by Hon'ble Apex Court was relied on by the counsel of the assessee, wherein Hon'ble Apex Court directed that the limitation will start after 31st May, 2022. Accordingly, it was contended that if we recalculate the period of delay from 01.06.2022 the period of

delay will be limited to 477 days only. With regard to this delay of 477 days, it was the contention of Ld. counsel of the assessee that after receiving the penalty order Covid pandemic begins and the assessee forgot to file the appeal against the penalty order and the fact of not filing the appeal came to the knowledge of the assessee only when demand/recovery notice was received by him i.e. in the month of October 2023, which was issued by the Assessing Officer. We find force in the above arguments of Ld. counsel of the assessee and therefore we are of considered opinion that the assessee has successfully explained the reason of delay in filing the appeal before Ld. CIT(A)/NFAC.

8. Considering the totality of the facts of the case and in the interest of justice and without going into the merits of the case, we deem it appropriate to set-aside the order passed by Ld. CIT(A)/NFAC and remand the matter back to him with a direction to condone the delay and decide the appeal afresh as per fact and law after providing reasonable opportunity of hearing to the assessee. The assessee is also hereby directed to respond to the notices issued by Ld. CIT(A)/NFAC in this regard and to produce relevant documents/submissions/evidences in support of his

contentions without taking any adjournment under any pretext, otherwise Ld. CIT(A)/NFAC shall be at liberty to pass appropriate order as per law. Thus, the grounds of appeal raised by the assessee are allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 28th day of January, 2026.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 28th January, 2026.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr.CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Assistant Registrar
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.