

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

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

ITA No.335/LKW/2025  
A.Y. 2015-16

Kapil Khandelwal, 56, Moar Kothi, Gangapur, Bareilly	vs.	Asstt. Commissioner of Income Tax, Circle-I, Bareilly
<b>PAN: AIYPK4908M</b>		
(Appellant)		(Respondent)

Assessee by:	Sh. P.K. Kapoor, C.A.
Revenue by:	Sh. R.R.N. Shukla, Addl CIT DR
Date of hearing:	22.01.2026
Date of pronouncement:	27.02.2026

**ORDER**

**PER NIKHIL CHOUDHARY, A.M.:**

This is an appeal filed by the assessee against the orders of the Id. CIT(A), NFAC under section 250 of the Income Tax Act, 1961, wherein the Id. CIT(A) has confirmed the penalty levied upon the assessee under section 271(1)(c) by the Id. AO on 17.03.2022 and dismissed the appeal of the assessee for the A.Y. 2015-16. The grounds of appeal are as under: -

*"1. BECAUSE requisite satisfaction for levy of penalty u/s 271(1)(c) if the Income Tax Act 1961 was not recorded in the regular assessment order dated 22.12.2017 passed a/s 100%, therefore, penalty proceedings got wholly vitiated and consequently, the id. "CIT(A)" ought to have quashed the penalty order dated 17.03.2022, being illegal, bad-in-law and without jurisdiction*

*2. BECAUSE the show cause notice for levy of penalty under section 271(1)(c) of the Act did not specify under which limb penalty was sought to be imposed i.e.. whether on account of concealment of income or for furnishing inaccurate particulars of income and consequently, the penalty order dated 17.03.2022 passed by Faceless Assessing Officer deserved to be quashed.*

*3.1 BECAUSE, even on merits, the Id. "CIT(A)" was not correct in upholding the penalty of Rs. 12,76,132/-levied u/s 271(1)(c) of the Act as the assessee has not*

*been found to have concealed his income as erroneously alleged in the penalty order.*

*3.2 BECAUSE mere disallowance of exemption of long-term capital gain of Rs. 20,64,939/-claimed u/s 10(38) of the Act and treating the same as business income by the authorities below does not tantamount to concealment of income and consequently, the Id. "CIT(A)" ought to have cancelled the penalty of Rs. 12,76,132/-levied by the Faceless Assessing Officer.*

*4. BECAUSE, without prejudice to grounds hereinfore, the Id." CIT(A)", while upholding the penalty order u/s 271(1)(c) of the Act, failed to appreciate that quantum appeal was pending before the Hon'ble ITAT and consequently, the Id. "CIT(A)" ought to have directed the Assessing Officer to keep the penalty proceedings u/s 271(1)(c) in abeyance.*

*5.BECAUSE case laws relied by authorities below are distinguishable from the facts of the present case.*

*6. BECAUSE the order appealed against is contrary to facts, law and principles of natural justice.*

*7. BECAUSE each ground taken in appeal is mutually exclusive and without prejudice to each other.*

*8. The appellant" craves leave to add, delete or modify any of the grounds before or at the time of hearing of appeal."*

2. The facts of the case are that the assessee was found to have purchased shares of M/s Kappac Pharma Limited from M/s Shalibhadra Steel Pvt. Ltd. and shares of M/s Goldline International Finvest Limited from M/s All Time Buildtech Limited and subsequently sold shares through broker M/s Alankrit Assignments Limited. The Principal Director of Income Tax (Inv.), Kolkata had conducted enquiries and come to a conclusion that M/s Kappac Pharma Limited and M/s Goldline International Finvest Limited were penny stock companies and the sale and purchase of those shares was done with a view of generating bogus entry of long term capital gains for exemption under section 10(38) of the Income Tax Act. Accordingly, the assessee was asked to show cause as to why the said capital gains claimed exempt should not be disallowed and added back to the income of the assessee. After considering the replies of the assessee in this regard, the Id. AO had added back a sum of Rs. 20,64,939/- as profits made by the assessee through this adventure in the nature of trade.

3. Aggrieved with the said order, the assessee had gone in appeal before the ld. CIT(A) but the ld. CIT(A) vide his orders dated 11.12.2019 had dismissed the appeal of the assessee.

4. Subsequent to the dismissal of the appeal of the assessee, the ld. AO also took up the case of the assessee for levy of penalty under section 271(1)(c) which had been kept in abeyance prior to the same. The assessee submitted that it had not concealed any particulars of income or furnished any inaccurate particulars and the addition had only been made by treating the long term capital gains as sham transactions. It was submitted that penalty could not be imposed upon it until mens rea was established. He placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products (P.) Ltd. 322 ITR 158 and submitted that penalty proceedings may be kept in abeyance in view of the fact that the assessee had filed an appeal before the ITAT Lucknow Bench. The ld. AO refused to consider the submissions of the assessee. He held that in the case of CIT vs. Reliance Petro Products (P.) Ltd. (supra), the Hon'ble Supreme Court had held that there must be something more than the fact that the details supplied in the return was not accurate, exact or correct but in the case of the assessee it was clear that there was an attempt to conceal income that was deliberate. Therefore, he held that it was a fit case for the imposition penalty under section 271(1)(c) for concealment of income and he decided to levy a penalty of 200% sought to be evaded. Accordingly, a penalty of Rs. 12,76,132/- came to be levied upon the assessee.

5. The assessee carried the matter to the ld. CIT(A), NFAC. The ld. CIT(A) considered the submissions of the assessee including the case laws cited by him but held that in this particular case, the ld. DIT (Inv.) had carried out countrywide investigation to unearthed the organized racket of generating bogus LTCG claimed as exempt under section 10(38) of the Income Tax Act, 1961. The Securities Exchange Board of India (SEBI) had also passed orders on the issue of manipulation of the share market. The assessee had traded in shares of, "Kappac Pharma Limited"

and, “M/s Goldline International Finvest” which were penny stocks and no satisfactory explanation had been provided by the assessee to explain the rise in the price of an unknown company from Rs. 12 per share and Rs. 10 per share to Rs. 293.27 per share and Rs. 130.93 per share respectively within no time and without any reasonable economic or financial basis. Thus, it was quite clear that the assessee had tried to claim bogus LTCG and furnished inaccurate particulars with regard to the same thereby attracting the mischief of section 271(1)(c). The Id. CIT(A) therefore, dismissed the appeals of the assessee and confirmed the penalty levied by the AO.

6. Aggrieved, the assessee is in appeal before us. At the very outset, it is noticed that the appeal is delayed by 183 days. Sh. P.K. Kapoor, C.A. (hereinafter referred to as the Id. AR) drew our attention to a condonation application under section 253(5) of the Income Tax Act by the assessee and an affidavit in which it was submitted that the order under section 250 dated 27.08.2024 had been communicated to the assessee on the same date but due to the bonafide and unintentional lapse from the end of Mr. Shobhit Agarwal, who was doing the accounting and income tax work of the assessee, the order was misplaced and he forgot to file the appeal before the ITAT against such order. Later on, Sh. Shobhit Agarwal on 10.04.2025 discovered the fact of misplacement of the order when the assessee enquired about the status of the appeal. An affidavit of Sh. Shobhit Agarwal, confirming these facts were submitted. It was further submitted that upon being reminded, Sh. Shobhit Agarwal contacted the CA, Sh. Gagan Mehrotra, who in turn contacted the present counsel Sh. P.K. Kapoor, C.A. based at Lucknow. It was submitted that the assessee had not gained in any manner from the delay. There is no willful or elaborate negligence on the part of the assessee and reliance was placed on the decision of the Hon’ble Supreme Court in the case of Collector of Land Acquisition Vs. MST. Katiji & Ors (1987)167 ITR 471 (SC) and that of the Hon’ble Allahabad High Court Bharat Auto Centre vs. CIT 82 ITR 366 (All) and in the case of Smt Govinda Devi vs. CIT 304 ITR 340 (All) to pray that where the party did not gain

any advantage by causing delay, the authority or Court must condone the delay and proceed to decide the matter on merits, after taking a liberal and pragmatic view because refusing to condone a delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. Accordingly, it was prayed that the appeal may be admitted for hearing. Sh. R.R.N. Shukla, Addl CIT DR submitted that the grounds cited by the assessee are seen to lack justification and could not explain the delay. Accordingly, he prayed that the assessee's appeal should not be heard since the assessee was not serious in pursuing it initially.

7. We have duly considered the matter. We feel that in the interest of justice, after considering the facts of the case, it is appropriate to hear the issues at hand and we note that the reasons cited by the assessee are not improbable. In the circumstances, we condone the delay and admit the appeal for hearing.

8. On the merits of the case, Sh. P.K. Kapoor, C.A., drew our attention to the fact that in ITA No. 115/LKW/2020, the quantum matter had come up for hearing before the ITAT 'SMC' Lucknow Bench and the ITAT Lucknow Bench 'SMC' had sent back to the file of the Id. CIT(A) on the grounds that there was an error in the order of the Id. CIT(A) in failing to deal with all the issues that have been raised in the appeal before him. Therefore, since the quantum appeal had been restored to the file of the Id. CIT(A), it was only appropriate that before penalty was levied upon the assessee for the default, the facts of the case be determined by the Id. CIT(A) in the quantum appeals. Accordingly, it was prayed that this matter may also be restored to the file of the Id. CIT(A) for a considered decision alongwith the quantum appeal.

9. Sh. R.R.N. Shukla, Addl CIT DR, did not have any objection to the matter being restored back to the file of the Id. CIT(A) for taking a considered decision alongwith the quantum appeal.

10. We have duly considered the facts and circumstances of the case. In view of the fact that the ITAT Lucknow 'SMC' Bench has restored the quantum appeal back to the file of the ld. CIT(A) in ITA No. 115/LKW/2020, we deem it appropriate to restore the issue of penalty under section 271(1)(c), based upon such additions, also to the file of the ld. CIT(A), so that a considered decision may be taken by him together on the quantum and the penalty. We also direct that this be brought to the notice of the ld. Pr. CCIT, NFAC so that the penalty appeal is allotted to the same CIT(A) who is entrusted with the task of hearing the quantum and/or may have passed order in the quantum appeal, for a proper appreciation of the facts of the case. In view of the fact that the appeal stands restored to the file of the ld. CIT(A), it is held to be allowed for statistical purposes.

11. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 27.02.2026.

*Sd/-*

**[SUDHANSHU SRIVASTAVA]  
JUDICIAL MEMBER**

DATED: 27/02/2026

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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.