

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL, INDORE BENCH, INDORE

श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष

BEFORE SHRI C.M.GARG, JUDICIAL MEMBER AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No. 1017/Ind/2016	
निर्धारण वर्ष/Assessment Year : 2006-07	
Shri Anil Kumar Biddua Q. No. G-5, Old Police Line, Behind Civil Court , Shahajanabad, Bhopal	vs. Income Tax Officer 1(1) Bhopal
अपीलार्थी/Appellant	प्रत्यर्थी/Respondent
स्था.ले.सं./PAN: AIWPB 9675L	
अपीलार्थी की ओर से/Appellant by	Shri Ashutosh Loya, CA
प्रत्यर्थी की ओर से/Respondent by	Shri Mohd. Javed, Sr. DR
सुनवाई की तारीख/Date of hearing	20.03.2017
उद्घोषणा की तारीख/Date of pronouncement	20.03.2017

आदेश /O R D E R

PER BENCH

This appeal filed by the assessee is directed against the order of Learned) Commissioner of Income-tax (Appeals)-I, Bhopal [in short CIT (A)] dated 30.06.2016 pertaining to Assessment Year 2006-07, which in turn has arisen from the order dated 24.04.2014 passed under section 271(1) (b) of Income Tax Act, 1961 ('the Act') by the Income Tax Officer 1(1), Bhopal (in short "the AO").

- 1.** In the grounds No. 1 &2 of appeal, the assessee has assailed the order of Id. CIT (A) in confirming the penalty of Rs. 10,000/- levied under section 271(1) (b) of the Act.
- 2.** Succinctly, facts as culled out from the orders of lower authorities are that the assessee has not filed any return of income. An AIR information was received for non Pana Data that the assessee has made investment of Rs. 4 Lakh in mutual fund. Therefore, after recording reason, notice u/s.148 was issued on 26.03.2013, but no return of income was filed, hence, after following due process of law, assessment was made under section 144 of the Act by making addition of Rs. 4 lakhs. During the course

of assessment proceedings, notice under section 142(1) was issued on 01.08.2013 fixing the hearing on 14.08. 2013. However, same was not complied with nor any reply to show cause notice u/s. 274 read with section 271(1) (b) dtd. 21.10.2013 was filed nor any written submissions were made. Again, a show cause notice u/s. 274 read with section 271(1) (b) issued 11.04.2014 for fixing hearing on 23.04.2014, which was served through speed post. In response to which, none attended nor any written submissions/explanation was furnished. In view of these facts and circumstances, the AO levied a penalty of Rs. 10,000/- was levied under section 271(1) (b) of the Act.

3. Being, aggrieved the assessee filed an appeal before the Id. CIT (A). During the course of appellate proceedings, the appellant merely submitted that the assessee did not receive notice by speed post. However, Id. CIT (A) observed that penalty order was also sent on same address and the assessee has duly received it and appeal was filed against this order. Therefore, the contention was not found acceptable and as seen that the assessee has not attended the assessment proceedings nor compelled with notice under section 142(1). It is not even complied with show cause notice under section 271(1) (b). Accordingly, levy of penalty was cam to be confirmed.

4. Being, aggrieved the assessee filed this appeal before the Tribunal. The Ld. A.R. submitted that the assessee has not receive the notice under section 142(1) of the Act as the notice was sent on wrong postal address at **G/S** Old Police Colony behind Civil Court Bhopal whereas assessee`s correct address was **G/5** old Police Colony behind Civil Court Bhopal. The Ld. A.R. also filed a copy of bank pass book in support of correct address. Therefore, there was reasonable cause for non-compliance of the notice. The assessee has made all efforts to obtain and submit the information as and when it came to his knowledge. The counsel of the assessee appeared before the CIT(A) after receiving penalty order by hand from Department and not because the notice was received by postal address by the assessee. Therefore, the assessee was unable to comply with, the notices issued to him.

5. On the other hand, the Ld. D.R. relied on the orders of lower authorities and submitted that the assessee has failed to furnishing return of income nor any compliance of the statutory notices was made. Therefore, the assessee has committed a default within the meaning of section 271(1) (b) of the Act. Hence, ld. CIT (A) as well as the AO were justified in levying penalty under section 271(1) (b) of the Act.

6. We have heard the rival submissions of both the parties and have perused the material available on record. We find that the assessee has not complied with the notice as it was sent on wrong postal address at **G/5** Old Police Colony behind Civil Court Bhopal whereas assessee`s correct address was **G/5** old Police Colony behind Civil Court Bhopal. The Ld. A.R. has filed copy of bank pass book of Bank of Baroda, giving postal address as **G/5 Old Police Line**. Which supports his contention of correct address. Therefore, there was reasonable cause for non-compliance of the notice. We also note that the assessee has made all efforts to obtain and submit the information as and when it came to his knowledge and accordingly received the penalty order from Department by hand and made reply before the Ld. CIT (A) . Thus, the counsel of the assessee had appeared before the CIT(A) after receiving penalty order by hand from Department and not because the notice was received by postal address by the assessee. Therefore, we are of the view that this constituted the reasonable cause. In view of these facts and circumstances, we are of view that the AO was not justified in levying of penalty u/s 271(1) (b) of the Act. In view of this matter, we cancelled the penalty levied under section 271(1)(b) of the Act. Accordingly, the grounds of appeal of the assessee is allowed.

7. In the result, the appeal of the assessee stands allowed.

8. The order pronounced in the open Court on 20.03.2017

Sd/-

Sd/-

(सी.एम.गर्ग)/(C.M. GARG)

(ओ.पी.मीना) / (O.P.MEENA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

Dated 20.03.2017/op