

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Delhi Bench "A", New Delhi**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER  
AND  
BEFORE Ms. Suchitra Kamble, JUDICIAL MEMBER**

I.T.A. No. 4027/Del/2016

A.Y.: 2008-09

Amit Kohli, F-103, First Floor, Aggarwal Tower Opp. Ajanta Apartment, Patparganj, New Delhi  <b>PAN:AKPPK3714J</b>	Vs.	ACIT Circle 55(1) New Delhi
[Appellant]		[Respondent]

Appellant by:	None
Respondent by:	Sh. B. Raman Juneyulu, Sr. DR

Date of Hearing:	23	10	2017
Date of Pronouncement:	23	10	2017

**ORDER**

**PER N.K. SAINI, A.M:**

This is an appeal by the assessee against the order dated 9.6.2016 of the learned CIT(A)-19, New Delhi. The only effective grounds raised in this appeal reads as under:-

*That on the facts of the case and under the law, the ld. CIT(A) had erred in confirming the ld. AO's action of imposing penalty u/s 271(1)(b) by the ld. AO for non compliance of her notice dt. 16.11.2015 fixing compliance for 24.11.2015, particularly when not only the said notice but also the notices*

*allegedly issued on earlier occasions were not reached into the hands of the assessee.”*

2. Nobody was present on behalf of the assessee neither any adjournment was sought. We, therefore, proceeded *ex parte* and the appeal is decided on merit after hearing the learned DR.

3. Facts of the case, in brief, are that the AO issued notice under Section 148 of the Act dated 30.3.2015 through speed post later on notice under Section 142(1) of the Act dated 10.8.2015 was issued fixing the case for hearing on 18.8.2015. On the said date neither anybody attended nor any communication was received by the AO. He, therefore, again issued notice under Section 142(1) of the Act dated 16.11.2015 fixing the hearing on 24.11.2015 on the said date also there was no compliance therefore the AO issued show cause notice under Section 142(1) dated 5.1.2016 fixing the date for hearing on 12.1.2016. On the said date neither anybody attended nor any communication was received by the AO. He, therefore, levied the penalty of Rs. 10,000/- under Section 271 (1)(b) of the Act for non compliance of the notice under Section 142(1) of the Act dated 16.11.2015 requiring the attendance of the assessee on 24.11.2015.

4. Being aggrieved the assessee carried the matter to the learned CIT(A) and submitted that no notice was received by the assessee and that the only final show cause notice dated 5.1.2016 was received by him through his neighbour. It was further submitted that the assessee informed the AO vide letter dated 13.1.2016 that notices were not received by him and therefore the compliance could not be made. But the said letter was not taken on the record by the AO while levying the penalty.

5. The learned CIT(A) after considering the submissions of the assessee did not find merit in the submission of the assessee and sustained the penalty

of Rs. 10,000/- under Section 271(1)(b) of the Act by observing in para 6 and 7 as under:-

*“6. I have gone through the facts of the case. It is an undeniable fact that all the earlier notices which had been sent by speed post had been served on the same address on which the show cause notice dated 05/01/2016 was issued. Since none of the envelopes had been returned back by the postal authorities as un-served, it cannot be accepted that the notices were not served on the appellant. Even the last notice which was received by him was not complied by the due date.*

*7. The Authorised Representative has stated that notices had been handed over to the appellant by a neighbour on 13-1-2016, & then reply was sent. However, it is a known fact that speed post letters are served only on the persons addressed or his immediate family members and not to the neighbours. Therefore, this argument of the appellant is also not believable. Furthermore, the appellant did not even attend on the 13-01-2016, He has alleged to have filed a letter which was not on record till the time the order was passed. Considering this approach of the appellant in the matter & the complete disregard to the notice issued by the Department, the penalty imposed by the Assessing Officer is upheld.”*

6. Now the assessee is in appeal.

7. The learned Sr. DR strongly supported the impugned order passed by the learned CIT(A) and reiterated the observations in para 6 and 7. We have considered the submissions of the learned D.R. and perused the material available on the record. In the present case, it is noticed from the penalty order that the AO issued notice under Section 142(1) of the Act dated 10.8.2015 and 16.11.2015 fixing the case for hearing on 18.8.2015 and 24.11.2015 respectively. Thereafter final show cause notice dated 5.1.2016 under Section 142(1) of the Act, was issued fixing the hearing on 12.11.2016. The assessee claimed that the said notice dated 5.1.2016 was received by him through his neighbour and he informed the AO vide letter dated 13.1.2016 that no notice was received by him therefore the compliance could not be made. However, the AO levied the penalty of Rs. 10,000/- under Section 271(1)(b) for non compliance of the notice dated 16.11.2015. From the

conduct of the AO, it appears that he was satisfied regarding non communication of the notice dated 10.8.2015 since no penalty has been levied for non compliance of the said notice. He has also not levied any penalty for non compliance if any for the notice dated 5.1.2016. In our opinion, when no notice was received by the assessee there was no occasion to make the compliance on 18.8.2015 and 24.11.2015. We, therefore, by considering the totality of the facts of the present case are of the view that the learned CIT(A) was not justified in confirming the penalty under Section 271(1)(b) of the Act levied by the AO. Accordingly, the impugned penalty is deleted.

8. In the result, appeal of the assessee is allowed.

(Pronounced in the open court at the time of hearing itself i.e. on 23.10.2017.)

**Sd/-**  
**[SUCHITRA KAMBLE]**  
**Judicial Member**

**Sd/-**  
**[N.K. SAINI]**  
**Accountant Member**

DATED: 23.10.2017

SH

Copy forwarded to:-

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

Assistant Registrar