

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.1009 & 1010/PUN/2016
निर्धारण वर्ष / Assessment Years : 2006-07 & 2007-08

Gunvant Vitthaldas Shah,
Swastik Oil Agencies,
Behind Old Padam Theatre,
Patel Chowk, Sangli,
Sangli - 416416

PAN : ADFPS4664Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward - 2(1), Sangli

.....प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Dr. Vivek Agrawal

सुनवाई की तारीख / Date of Hearing : 21-02-2018
घोषणा की तारीख / Date of Pronouncement : 23-02-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These two appeals have been filed by the assessee assailing the order of Commissioner of Income Tax (Appeals)-1, Kolhapur dated 04-03-2016, common for the assessment years 2006-07 and 2007-08 confirming levy of penalty u/s. 271(1)(b) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

Since, the issue involved in both the appeals is identical, that is with respect to levy of penalty u/s. 271(1)(b) of the Act, these appeals are taken up together for adjudication and are decided vide this common order.

2. The brief facts of the case as emanating from records are : The assessee is a proprietor of M/s. Swastik Oil engaged in retail trading of lubricant oil products. The Assessing Officer reopened assessments of the assessee for assessment years 2006-07 and 2007-08 by issuing notice u/s. 148 of the Act on 22-10-2007 for assessment year 2006-07 and notice dated 09-04-2008 for assessment year 2007-08. In the meantime, a survey action u/s. 133A was carried out in the business premises of the assessee on 15-11-2007. Various papers including books of account, bill books etc. were impounded from the business premises of the assessee. The Assessing Officer issued notices u/s. 142(1) of the Act for both the impugned assessment years and the same were duly served on assessee as and when issued. The assessee allegedly did not comply with the notices hence, the Assessing Officer was constrained to complete the assessment u/s. 144 of the Act. The Assessing Officer initiated penalty proceedings u/s. 271(1)(b) for non-compliance of the notices issued u/s. 142(1) of the Act. The details of notices issued by Assessing Officer for the impugned assessment years are as under :

Assessment Year 2006-07

Sr. No.	Date of issue of notice u/s. 142(1)	Date of service	Date of compliance required	Remarks
1	18.06.2008	18.06.2008	08.07.2008	No compliance
2	30.07.2008	31.07.2008	11.08.2008	--do--
3	08.09.2008	09.09.2008	18.09.2008	--do--
4	31.10.2008	31.10.2008	10.11.2008	--do--
5	11.11.2008	11.11.2008	21.11.2008	--do--
6	28.11.2008	28.11.2008	02.12.2008	--do--

Assessment Year 2007-08

Sr. No.	Date of issue of notice u/s. 142(1)	Date of service	Date of compliance required	Remarks
1	18.06.2008	18.06.2008	08.07.2008	No compliance
2	30.07.2008	31.07.2008	11.08.2008	--do--
3	08.09.2008	09.09.2008	18.09.2008	--do--
4	31.10.2008	31.10.2008	10.11.2008	--do--
5	11.11.2008	11.11.2008	21.11.2008	--do--

Thereafter, the assessee issued show cause notices u/s. 274 r.w.s. 271 on 11-11-2008 for assessment years 2006-07 and 2007-08 initiating levy of penalty u/s. 271(1)(b) of the Act. The Assessing Officer levied penalty u/s. 271(1)(b) of Rs.60,000/- i.e. @ Rs.10,000/- for each default of non-compliance in assessment year 2006-07 and penalty of Rs.50,000/- for similar reasons in assessment year 2007-08.

Aggrieved by orders levying penalty for the respective assessment years, the assessee filed appeals before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) after considering the submissions of assessee and examination of the records came to the conclusion that the assessee had complied with the notice dated 11-11-2008 issued for assessment years 2006-07 and 2007-08. Accordingly, the Commissioner of Income Tax (Appeals) reduced levy of penalty u/s. 271(1)(b) in assessment year 2006-07 to Rs.50,000/- and in assessment year 2007-08 to Rs.40,000/-. Now, the assessee is in second appeal before the Tribunal assailing the order of Commissioner of Income Tax (Appeals) in confirming remaining penalty u/s. 271(1)(b) in both the impugned assessment years.

3. The notice of the appeals was issued to the assessee on 04-01-2018 for 21-02-2018. The notice was sent through RPAD on the address furnished by assessee in Form 36. None has appeared on behalf of the assessee. Therefore, we proceed on to decide the appeals on the basis of submissions made by ld. DR and the material available on record.

4. Dr. Vivek Agrawal representing the Department submitted that it is apparent from record that the assessee has not complied with the notices issued u/s. 142(1) of the Act repeatedly. The assessee throughout assessment proceedings was non-cooperative. The conduct of assessee shows that he is recalcitrant and has no respect for the law of land. Since, the assessee did not cooperate with Assessing Officer and failed to appear before him during assessment proceedings, the Assessing Officer had to complete the assessment u/s. 144 of the Act. The ld. DR vehemently supporting the order of Commissioner of Income Tax (Appeals) prayed for dismissing the appeals of assessee.

5. We have heard the submissions made by the ld. DR and have perused the orders of authorities below. A perusal of order dated 29-05-2009 for assessment year 2006-07 levying penalty u/s. 271(1)(b) reveal that the assessee had furnished an explanation for non-appearance before the Assessing Officer. The assessee has categorically stated that he had handed over all the notices to his authorized representative for compliance and he acted promptly. The authorized representative of the assessee Shri D.S. Palkar, Chartered Accountant has filed his affidavit before the Assessing Officer admitting that he had received all notices from the assessee and had appeared before the Assessing Officer. The Assessing Officer outrightly rejected the contentions of the authorized

representative with respect to authorized representative's appearance before him. However, one fact which remained unrebutted is that the assessee after receiving the notices had passed on the same to his authorized representative for further necessary action.

A further perusal of order levying penalty reveal that the authorized representative of assessee has clarified to Assessing Officer that all the papers regarding assessments are already on record. Similar explanation was furnished by the assessee in assessment year 2007-08.

6. From the submissions made by assessee before Commissioner of Income Tax (Appeals) it emerges that books of account and other documents were impounded from the business premises of assessee during survey. Though the books were in possession of Assessing Officer, the assessee and his authorized representative was required to appear before the Assessing Officer in compliance of notices issued u/s. 142(1). The assessee cannot escape from responsibility of complying with the notices by merely stating that the notices were handed over by him to authorized representative. Though the authorized representative was under obligation to appear before Assessing Officer on behalf of assessee, yet the assessee was responsible to ensure due compliance of the notices.

7. The Commissioner of Income Tax (Appeals) has reduced the penalty from Rs.60,000/- to Rs.50,000/- in assessment year 2006-07 and for assessment year 2007-08 the penalty has been reduced to Rs.50,000/- to Rs.40,000/- as there was compliance by assessee with respect to notice issued on 11-11-2008. Taking into consideration entirety of facts, we are of considered view that there is some element of negligence on the part of assessee in non-compliance of notice u/s. 142(1) of the Act. The ends of

justice would be met by restricting the penalty to Rs.10,000/- only in each assessment year i.e. Rs.10,000/- for assessment year 2006-07 and Rs.10,000/- for assessment year 2007-08. Thus, in principle we uphold levy of penalty u/s. 271(1)(b) of the Act in both the impugned assessment years, however, penalty is restricted to Rs.10,000/- for each assessment year. Hence, the grounds raised by assessee in both the appeals are partly allowed in the terms aforesaid.

8. In the result, the appeals of assessee are partly allowed.

Order pronounced on Friday, the 23rd day of February, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 23rd February, 2018
RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Kolhapur
4. आयकर आयुक्त / The CIT-I, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune