

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राँव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 311/JP/2018  
निर्धारण वर्ष/Assessment Year : 2009-10.

Shri Chouth Mal Sharma, Kototya Ki Dhani, Gram-Nindar, Tehsil- Amer, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 7(4), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. CLCPS 3408 R		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal (CA)  
राजस्व की ओर से/ Revenue by : Smt. Poonam Rai (DCIT)

सुनवाई की तारीख/ Date of Hearing : 02.07.2018.  
घोषणा की तारीख/ Date of Pronouncement : 05/07/2018.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 24<sup>th</sup> January, 2018 of Id. CIT (A)-3, Jaipur arising from penalty order passed under section 271(1)(b) of the I.T. Act for the assessment year 2009-10. The assessee has raised the following grounds :-

1. The Id. CIT (A) has erred on facts and in law in confirming the levy of penalty of Rs. 20,000/- u/s 271(1)(b) of the IT Act, 1961.
2. The assessee craves to amend, alter and modify any of the grounds of appeal.
3. The appropriate cost be awarded to the assessee."

2. The assessee is an agriculturist and sold agricultural land at village Nindar, Tehsil Amer. The AO issued notice under section 148 on 31<sup>st</sup> May, 2013 on the basis of information received from Sub Registrar about the sale of agricultural land. The notice issued under section 148 was served through affixture. Thereafter, notice under section 142(1) was issued on 30<sup>th</sup> April, 2014. Since there was no response and compliance on behalf of the assessee to the notices issued by the AO, accordingly the AO framed the assessment under section 147 read with section 144 of the IT Act on 23<sup>rd</sup> January, 2015 and initiated penalty proceedings under section 271(1)(b) by issuing a notice on 15.07.2015. The AO levied penalty of Rs. 10,000/- each for failure on notices issued under section 148 and 142(1) of the Act total amounting to Rs. 20,000/- vide order dated 31<sup>st</sup> July, 2015. The assessee challenged the action of the AO before the Id. CIT (A) but could not succeed.

3. Before us, the Id. A/R of the assessee has submitted that penalty under section 271(1)(b) can be imposed by the AO if he is satisfied that any person failed to comply with the notice under section 142(1) or under section 143(2) or directions issued under section 142(2A) of the Act. Therefore, no penalty can be levied under section 271(1)(b) for non compliance of notice issued under section 148. Hence, the Id. A/R has submitted that the penalty levied by the AO of Rs. 10,000/- for non compliance of notice under section 148 is not valid as the provisions of section 271(1)(b) cannot be invoked. He has referred to the provisions of section 271(1)(b) and submitted that it stipulates the levy of penalty on account of failure or non compliance of assessee to the notice under section 142(1) or section 143(2) or section 142(2A) of the Act. As regards the non compliance of notice issued under

section 142(1), the Id. A/R of the assessee has submitted that since the assessee shifted his residence from the place as given in the Sale Deed, therefore, the notices issued by the AO could not be served on the assessee. The assessee in the appellate proceedings furnished the relevant documents to show that the assessee shifted his residence at Jhotwara and, therefore, in the absence of service of notice issued by the AO, the assessee could not comply with the notice under section 142(1). He has also referred to the decision of this Tribunal in assessee's own case dated 20.11.2017 in quantum proceedings against the ex parte assessment passed by the AO and submitted that the Tribunal has set aside the matter to the record of the AO for deciding the same denovo as per law. Hence, the Id. A/R has pleaded that the penalty levied by the AO under section 271(1)(b) may be deleted/cancelled.

3.1. On the other hand, the Id. D/R has submitted that despite repeated notices the assessee did not respond and appear in the assessment proceedings. Even in the penalty proceedings, nobody has appeared on behalf of the assessee and there is a report of the Inspector that the assessee refused to receive the notice. She has further pointed out that the AO has levied the penalty for non compliance of statutory notice under section 142(1) as well as other show cause notice issued by the AO, therefore, it is not the case for levy of penalty for non compliance of notice under section 148 only but since the assessee has not complied with the notice issued under section 142(1) and other show cause notices, therefore, the AO has imposed the penalty of Rs. 20,000/-. She has relied upon the orders of the authorities below.

4. We have considered the rival submissions as well as the relevant material on record. The assessee is not regularly assessed to tax. Since the assessee has sold the ancestral agricultural land during the year relevant to the year under consideration, therefore, as per the information received from the Sub Registrar, the AO issued notice under section 148 of the Act. The AO has recorded in the order that the notice issued under section 148 was served through affixture as the assessee was not available at the place of address. Further, the notice issued under section 142(1) was also not served on the assessee and, therefore, there was no compliance by the assessee to the notice issued under section 142(1). The assessment was framed under section 147 read with section 144. Even during the penalty proceedings, none has appeared on behalf of the assessee and the AO has stated in the order that the notice was refused to be received. Even the Inspector also reported that assessee has refused to take notice though none of the reports of the Postal Authorities or the Inspector has stated that the assessee was available at the place and assessee refused to receive the notice. Therefore, the assessee has explained the fact that he has shifted his place of residence and, therefore, he could not receive the notice issued by the AO. The assessee has given the current address at 88, Ram Nagar – B, Jhotwara, Jaipur. We find that the current address of the assessee is mentioned in the order of the Tribunal in quantum appeal No. 530/JP/2017. As regards the penalty levied by the AO of Rs. 10,000/- for non compliance of notice under section 148, we find that the provisions of section 271(1)(b) cannot be invoked for non compliance of notice under section 148. The AO while passing the order under section 271(1)(b) has observed as under :-

“ In such facts and circumstances I am satisfied that the assessee is liable to be penalized u/s 271(1)(b) of the I.T. Act, 1961 for non compliance of statutory notice issued u/s 148/142(1) and show cause notice issued of the I.T. Act, 1961 issued by this office on 31.05.2013, 30.04.2014.”

Thus it is clear that the AO has levied the penalty @ Rs. 10,000/- each for non compliance of notices under section 148/142(1) of the Act. As it is clear from the provisions of section 271(1)(b) that this provision can be invoked only for non compliance of notice under section 115WD(2) or section 115WE(2) or section 142(1) or 143(2) or directions issued under section 142(2A) of the Act, therefore, other than the default committed by the assessee specified in the clause (b) of section 271(1) the non compliance to the other notices or directions would not attract the penalty under section 271(1)(b) of the Act. Accordingly, the penalty levied under section 271(1)(b) for non compliance of notice under section 148 is not valid and the same is deleted.

5. As regards the penalty levied for non compliance of notice under section 142(1), we find that the assessee was not served with any of the notices issued by the AO due to the change of address and since the assessee has not filed any return of income, therefore, the AO was not having the present address of the assessee. Hence when the notice issued under section 142(1) was not served upon the assessee, and the AO has not conducted further enquiry regarding the current address of the assessee then in the facts and circumstances of the case that the assessee had already furnished the current address in the quantum proceedings, we find that the reasons explained by the assessee are bonafide and reasonable.

Accordingly, in the facts and circumstances of the case, we delete the penalty imposed under section 271(1)(b) of the Act for non compliance of section 142(1).

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

Order is pronounced in the open court on 05/07/2018.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV )  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल रॉव )  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

Jaipur  
Dated:- 05/07/2018.  
Das/

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

1. The Appellant- Shri Chouth Mal Sharma, Jaipur.
2. The Respondent –The ITO Ward 7(4), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No.311/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

