

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI FRIDAY BENCH 'A' : NEW DELHI
(Through Video Conferencing)

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA NO. 1722/DEL/2013
A.Y. 2006-07

ABHISHEK VERMA,
C/O MR. GAURAV
CHANDHOK, CHAMBER N.
636, DWARKA COURTS,
SECTOR-10,
NEW DELHI - 75
(PAN: ABMPV5153C)
(Appellant)

Vs. ACIT, CENTRAL CIRCLE -12,
ARA CENTRE, JHANDEWALAN
EXTN.,
NEW DELHI
(Respondent)

Appellant by : Sh. Himanshu Aggarwal &
Sh. Lalit Mohan, CA
Respondent by : Sh. Satpal Gulati, CIT(DR)

ORDER

PER H.S. SIDHU, JM :

This appeal is filed by the Assessee against the impugned order dated 22.1.2013 passed by the Ld. CIT(A)-XXXI, New Delhi for the assessment year 2006-07 on the following grounds:-

1. The Assistant Commissioner of Income Tax, Central Circle-12, New Delhi who purportedly issued the notice u/s. 142(1) of the I.T. Act, conducted the proceedings and imposed the penalty was not authorized to exercise the power and perform the functions of the Assessing Officer and therefore, the said notice as well as the penalty order are invalid, null and void ab initio.

2. Notice, dated 22.8.2006, u/s. 142(1) of the Act directing the appellant to furnish the return of income was not served upon the appellant and even the penalty order speaks only about issuance of the notice and is totally silent regarding service thereof and the imposition of penalty, without service of the notice, is invalid, null and void ab initio.
 - 2.1 The Ld. CIT(A) failed to appreciate that any other notice was not issued by the Ld. ACIT directing the Assessee to file the return of income.
3. The Ld. CIT(A) erred in confirming the imposition of penalty of Rs. 10,000/- u/s. 271(1)(b) of the Act for not filing the return of income, particularly without determining that the income is taxable and by ignoring the fact that penalty for non filing of return of income is prescribed u/s. 271F of the Act.
4. The Ld. CIT(A) erred in holding that section 292BB of the Act is applicable.
5. The Ld. ACIT as well as the Ld. CIT(A) had made observations which are without any material or evidence on record and against the facts of the case.
6. The penalty order as well the order of the Ld. CIT(A) is against the facts as well as law.

2. The brief facts of the case are that notice u/s. 142(1) of the Income Tax Act, 1961 (in short "Act") was sent to the assessee on 22.8.2006 asking the assessee to file true and correct return of his income for the assessment year 2006-07 or to produce its Income tax return for the assessment year 2006-07. Date of hearing was fixed for 15.9.2006 but none appeared for hearing nor filed any application for adjournment. AO issued a notice u/s. 142(1) of the Act, questionnaire and show cause notice u/s.

271(1)(b) of the Act for the assessment year 2006-07 dated 01.10.2008 and was served on the assessee on 03.10.2008. Assessee was asked to give reply by 13.10.2008. On 06.10.2008, a fax was received from the assessee denying the service of notice and sent the intimation to the AO for sending all notices / summons and other documents on the address of his Advocate in Patiala House i.e. "*Abhishek Verma, C/o Mr. Jitendra Garg, Advocate, Chamber 137, Patiala House Courts, New Delhi – 110 003 (Tel#+91.11.23388320).*" On 10.10.2008 the assessee sent a letter by speed post which was received by the AO on 13.10.2008. In reply to the same, a letter was written to assessee on 15.10.2008 requesting for appearance through his Authorised Representative in the penalty proceedings and also stated that no further adjournment will be given to the assessee. On 23.10.2008 Sh. Sachin Kumar, Authorised Representative of the Assessee appeared for hearing and produced the Power of Attorney. He was asked to file the details asked in the questionnaire. He was also shown copy of notice u/s. 142(1) of the Act dated 22.8.2006 which had remained un-complied. The Authorised Representative of the Assessee asked for two weeks time to reply the notice u/s. 142(1) of the Act and questionnaire. The next date of hearing was fixed for 04.11.2008. On 4.11.2008 again Sh. Sachin Kumar appeared for hearing. Next date for hearing was fixed for 11.11.2008. On 11.11.2008 the Authorised Representative of the assessee again appeared for hearing and filed a letter asking for adjournment as he was unable produce the details called for. The Authorised Representative of the assessee again asked on why the penalty u/s. 271(1)(b) of the Act should not be imposed as no return till date has been filed in response to the notice u/s. 142(1) of the Act. He was further asked to provide other information and next date of hearing was fixed for 14.11.2008. On 14.11.2008, Sh. Sachin Kumar, Authorised Representative of the Assessee again appeared

for hearing and filed a letter dated 10.11.2008. The Authorised Representative was not able to file any reply to the queries. The Authorised Representative was again asked why no return of income has been filed till date to which the Authorised Representative pleaded his ignorance.

2.1 Keeping in view of the facts and circumstances as explained above, the Assessing Officer was of the view that in spite of the various opportunities given by him to the assessee for filing his return of income, but in spite of the same and show cause notices, penalty u/s. 271(1)(b) of the Act amounting to Rs. 10,000/- was imposed for failing to file the return of income, vide order dated 14.11.2008. Against the penalty order dated 14.11.2008, assessee appealed before the Ld. First Appellate Authority, who vide his impugned order dated 22.01.2013 dismissed the appeal filed by the Assessee. Now the assessee has filed the present appeal before the Tribunal against the impugned order dated 22.1.2013 passed by the Ld. CIT(A)-XXXI, New Delhi.

3. At the time of hearing, Ld. Counsel for the assessee reiterated the arguments advanced by the assessee before the revenue authorities and requested that the penalty in dispute may be deleted.

4. On the contrary, Ld. CIT(DR) relied upon the impugned order passed by the Ld. CIT(A), New Delhi and stated that in spite of the various opportunities given to the assessee for filing the return of income for the assessment year in dispute, assessee has not filed any return of income and the AO after issuing the show cause notice, as per law imposed the penalty in dispute and Ld. CIT(A) has rightly dismissed the appeal filed by the Assessee. Therefore, the appeal filed by the assessee may be dismissed.

5. We have heard both the parties and perused the orders of the authorities below especially the impugned order of the Ld. CIT(A) and we are of the view that Ld. CIT(A) has rightly dismissed the

grounds raised by the assessee regarding the jurisdiction of the Assessing Officer by holding that this penalty proceedings has been initiated after the insertion of Section 292BB in the statute and on the date of levying the penalty i.e. 29.06.2010, the provision was very much on the statute. We agree with the findings given by the Ld. CIT(A) and reject this plea of jurisdiction of the Assessee.

5.1 As regards the service of notice under section 142(1) of the Act, after going through the orders passed by the revenue authorities, we are of the view that Notice u/s. 142(1) of the I.T. Act, 1961 dated 22.8.2006 was sent to the assessee to file the return of income or to produce the proof of having filed the return of income for the current assessment year and other notice u/s. 142(1) of the Act along with questionnaire and show cause notice u/s. 271(1)(b) of the Act issued by the AO having served upon the assessee on 03.10.2008 when the assessee was in the Tis Hazari Courts, Delhi. The assessee has also given his reply dated 06.10.2008 that he has not received the earlier notices and given the new address of his Advocate and he further sent a letter dated 10.10.2008 and argued that having not received the earlier notices u/s. 142(1) of the Act and there could not be any proceedings pending under the Act before the Assessing Officer meaning thereby the assessee is having the knowledge of all the notices which has already been served upon the assessee and he was watching the proceedings through his counsel/Authorised Representative. Assessee has also requested for various adjournments which was given by the Assessing Officer. Sh. Sachin Kumar, CA/Authorised Representative of the Assessee appeared before the AO and file his Power of Attorney and requested for various adjournments which were granted by the AO, but in spite of the various adjournments given by the AO to the Ld. Authorised Representative of the assessee, no return of income was filed by the assessee in spite of the various opportunities given by the AO

to the Authorised Representative of the assessee and lastly the Authorised Representative of the assessee shows his inability and therefore, the AO has rightly imposed the penalty in dispute and the Ld. CIT(A) has also rightly dismissed the appeal filed by the Assessee.

6. Keeping in view of the facts and circumstances of the present case and the non-cooperation of the assessee before the authorities below, we are of the view that the assessee is not entitled for any leniency in this matter. Therefore, we uphold the impugned order of the Ld. CIT(A) by dismissing the appeal filed by the Assessee.

7. In the result, the appeal filed by the Assessee stands dismissed.

Above decision was announced on 25th January, 2021 in the Open Court.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

SRB.

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar