

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.1044/M/2019
Assessment Year: 2014-15**

Mr. Dilip Kumar A. Jain, C/o. G.P. Mehta & Co. CAS, 807, Tulsiani Chambers, Nariman Point, Mumbai – 400 021 PAN: AABPJ4130D	Vs.	ITO, W-18(1)(4), 206, Earnest House, 11 Floor, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Vijay Jaiswal, D.R.

Date of Hearing : 21.10.2020
Date of Pronouncement : 14.12.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 13.12.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2014-15.

2. At the time of hearing we notice that none appeared on behalf of the assessee nor any application for adjournment was filed. Therefore, we are deciding this appeal ex-parte after hearing the Ld. D.R.

3. The only issue raised by the assessee is against the confirmation of penalty of Rs.10,000/- by Ld. CIT(A) as levied by the AO under section 271(1)(b) of the Act.

4. The facts in brief are that the assessment was framed in this case under section 143(3) of the Act vide order dated 30.12.2016 assessing the total income at Rs. Nil as against the declared loss of Rs.11,71,758/-. According to the AO, the assessee has not made any compliance of the notice issued under section 142(1) dated 21.12.2016 whereby the is fixed 31.10.2016. The AO observed that since the assessee has not made any compliance to the notice issued under section 142(1) of the Act and accordingly a notice under section 274 read with section 271(1)(b) of the Act dated 18.11.2016 was issued to the assessee to show cause as to why the penalty should not be levied under section 271(1)(b) of the Act fixing the date on 28.11.2016 which according to the AO was also not responded. Finally, the AO levied the penalty of Rs.10,000/- for non compliance of the statutory notice issued under section 142(1) of the Act vide order dated 07.12.2016 passed under section 271(1)(b) of the Act.

5. The Ld. Ld. CIT(A) also dismissed the appeal of the assessee by noting that assessee has received all the notices except the notice issued under section 142(1) dated 21.10.2016 which is highly improbable and thus upheld the order of the AO.

6. After hearing the Ld. D.R. and perusing the material on record, we observe that in this case the assessee has been denying the fact that the notice issued under section 142(1)

dated 21.10.2016 and show cause notice issued u/s 274 r.w.s. 271(1)(b) of the Act dated 18.11.2016 were not received by the assessee for which the AO has levied penalty on the assessee. The Ld. CIT(A) has just on the basis of presumption confirmed the penalty by holding that it is highly improbable that the assessee has not received the notice for which the penalty was levied whereas all other notices were duly served upon the assessee. In our opinion, the levying of penalty on just the presumption basis is not justified and fair and can not be sustained. In our opinion, the Ld. CIT(A) should have gone into the issue whether actual service of notice was done or not. In view of these facts and circumstances, we are not in a position to sustain the order of Ld. CIT(A) and accordingly, set aside the order by directing the AO to delete the penalty.

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

Order pronounced in the open court on 14.12.2020.

Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 14.12.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.