

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "SMC", CHANDIGARH

BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 285/CHD/2021

निर्धारण वर्ष / Assessment Year : 2012-13

Sh. Sunil Kumar Sharma, House No. 184, Sector 6, Panchkula	बनाम	The Addl. / Joint / Deputy / ACIT, NFAC, Delhi
स्थायी लेखा सं./PAN NO: ABXPS6779C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing though video Conferencing

निर्धारिती की ओर से/Assessee by : Shri Vineet Krishan, Advocate

राजस्व की ओर से/ Revenue by : Sh. Ashok Khanna, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 06.12.2021

उद्घोषणा की तारीख/Date of Pronouncement : 07.01.2022

आदेश/Order

Per Sudhanshu Srivastava, Judicial Member:

This appeal is preferred by the assessee challenging the order dated 28.08.2021 passed u/s 250 of the Income Tax Act, 1961 (in short 'the Act') by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'CIT(A)'].

2. The sole issue before us is levy of penalty of Rs. 10,000/- imposed u/s 271(1)(b) of the Income Tax Act, 1961.

3. The grounds raised by the assessee are as under:-

1. *That the order passed under section 250 by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi in Appeal No. ITBA/NFAC/S/250/ 2021-22/ 10351559718(1) dated 28.08.2021 is contrary to law and facts of the case.*
2. *That in the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) gravely erred in upholding the penalty of Rs. 10,000/-imposed by the ld. Assessing Officer under Section 271(1)(b) of the Income Tax Act, 1961.*
3. *That the appellant craves to add, amend or alter any ground of appeal before or at the time of hearing of appeal, with the permission of the Hon'ble Income Tax Appellate Tribunal, Chandigarh.*

4. The Ld. Authorised Representative (AR) drew our attention to order dated 28.05.2021, wherein, the penalty of Rs. 10,000/- u/s 271(1)(b) of the Act has been imposed on the ground that the assessee had not submitted any submissions / replies in response to the notices and letters issued during the course of assessment proceedings. The Ld. AR drew our attention to Para 4 of the impugned order which reads as under:-

"This is in response to the Show Cause Notice dated 25.02.2021 issued by Ld Assessing Officer for penalty under Section 271(1)(b) of the Income Tax Act, 1961 in the case of the appellant, the appellant had filed reply dated 01.03.2021 (copy enclosed) before the Id. Assessing Officer and had explained the reasons for the alleged non-compliance for notice under Section 142(1) dated 07.11.2019. During the penalty proceedings under Section 271(1)(b) of the Income Tax Act, 1961, the appellant had explained and submitted the reply on 01.03.2021 which is reproduced as below:-

"It is submitted that penalty proceedings were initiated on the ground that the assessee had failed to comply with the notice dated 07.11.2019 which was fixed for hearing on 13.11.2019. It is further submitted that there is no non-compliance on the part of the assessee only 13.11.2019 and the assessee immediately as per letter dated 13.11.2019 (copy enclosed) explained to Id. Income Tax Officer, Ward 3(3), Chandigarh as under:-

"It is submitted that the said notice has been received today only and for proper reply to all the questions called for will take some time. We appreciate that you are in hurry to decide the case but hurry also will take some time". I shall feel grateful if the above said case may kindly be adjourned for about a week".

The said letter was submitted on the same day. The copy of e-proceedings acknowledgement is attached. No reasonable opportunity of being heard.

It is further submitted here that explanation submitted before the Id Assessing Officer will show that there was a valid and reasonable ground for filing of adjournment, as the time given for compliance of notice u/s 142(1) was merely a symbolic and no reasonable time was given to the appellant to make the compliance. However, there was no non-compliance as alleged by the Id. Assessing Officer as the appellant had filed adjournment application which was never rejected by the Id. Assessing Officer and as explained supra that the time given by the Id. Assessing Officer for compliance was merely a symbolic and no reasonable opportunity of being heard was given to the appellant.

In view of the above facts and circumstances, it is humbly prayed that penalty levied under Section 271(1)(b) of the Income Tax Act, 1961 may kindly be deleted."

4.1 The Ld. AR submitted that, therefore, the assertion of the Department that no submissions had been received from the assessee's side is incorrect in as much as the assessee was not afforded proper time and opportunity to file the reply. The Ld. AR prayed that the penalty be deleted.

5.0 Per contra, the Ld. Sr. DR placed reliance on the orders of the authorities below.

6.0 We have heard the rival submissions and have gone through the material on record. We agree with the contention of the Ld. Authorised Representative that the impugned penalty has been wrongly imposed as there was no fault on the part of the assessee for the simple reason that assessee did not get adequate time to respond to the queries raised by the Department. In such a situation, we are unable to uphold the penalty so imposed. We set aside the order of the Ld. First Appellate Authority and direct the Assessing officer to delete the penalty.

7.0 In the final result, the penalty of the assessee stands allowed.

Order pronounced on 07.01.2022.

Sd/-
(N. K. SAINI)
Vice President
Dated : 07.01.2022
"आर.के."

Sd/-
(SUDHANSHU SRIVASTAVA)
Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar