

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

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 236/JP/2021  
निर्धारण वर्ष / Assessment Years : 2008-09

Asha Yadav Vaishali Nagar, Jaipur-302021.	बनाम Vs.	ITO, Ward-1(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAMPY 4719 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri R.S. Poonia (C.A.)  
राजस्व की ओर से / Revenue by : Shri A.S. Nehra (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 29/03/2022  
उदघोषणा की तारीख / Date of Pronouncement : 04/04/2022

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal by the assessee is directed against the order of the Id. CIT(A), National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] arising from penalty order passed U/s. 271(1)(b) of the Income Tax Act, 1961 (in short the "Act") for the AY 2008-09.

2. The assessee has raised the following grounds:-

*"1. That under the facts and in the circumstances of the case the Ld. CIT (Appeals) has erred in law and facts in confirming the penalty of Rs. 10,000/- imposed by Ld. Assessing Officer under section 271(1)(b) of the*

*I.T. Act, 1961 which is wrong, unwarranted and bad in law. Kindly delete the same.*

*2. That the appellant craves permission to add to or amend to any of the above grounds of appeal or to withdraw any of them.”*

3. Brief facts of the case are that on the basis of information in possession of the department and after recording reasons to belief the assessment has been reopened u/s 147, and notice u/s 148 of the Income Tax Act, 1961 was issued on 17.03.2015 which was served upon the assessee through postal authorities. Thereafter, notice u/s 142(1) was again issued on 27.07.20185 and duly served on assessee by postal authorities. This notice was none complied. Neither anybody attended nor filed any reply. Thereafter, one more final show cause was again issued on 19.02.2016 for 29.02.2016 on order to provide a final opportunity to the assessee. None attended nor filed any reply. In the circumstances, the case was completed in terms of provisions of Section 144 of the Income-Tax Act, 1961 on the basis of the material available on record.

4. The AO arrived the findings that the assessee did not comply with the notices issued and served upon it. The Assessing Officer upon the following judgments for passing the best judgment assessment order U/s 144 of the IT Act, 1961. In this case mentioned below, it has been held that if the assessee does not comply with the statutory notices, ex-parte assessment order U/s 144 of the Act can be passed by the competent authority and further noted that in the absence of adequate explanations by the assessee who has failed to discharge its onus. Therefore, Penalty proceeding U/s 271(1)(c) is initiated for furnishing inaccurate particulars of income and concealing his income. Notice U/s 271(1)(c) read with section Under section 142(1) of the Income Tax Act, 1961, penalty proceedings U/s 271(1)(b) of the IT Act, 1961 is initiated and notice 271(1)(b) read with section 274 was issued.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the ld. CIT(A). Before the ld. CIT(A), the assessee has reiterated its arguments in written submission dated 19.10.2021 which are as under:

*“1. The assessee is an individual and during the year under consideration she has not taxable income.*

*2. That notice u/s 148 of the Income Tax Act, 1961 was issued on 17.03.2015.*

*3. That the assessment was completed u/s 147/144 of the I.T. Act, 1961 (ex-party vide dated 03.03.2016.*

*4. Further, the penal proceeding u/s 271(1)(b) of the I.T. Act, 1961 was also initiated by Ld. AO for non compliances of the notices issued during the assessment proceedings.*

*5. But, the said notice was served to wrong address by the Ld. AO i.e. DAV Central Academy, Vaishali Nagar, Jaipur and the assessee not received any notice during the assessment proceedings.*

*6. That the Ld. AO without considering the facts and circumstances before him passed an order u/s 271(1)(b) of the I.T. Act, 1961 vide dated 17.06.2016 by imposed a penalty of Rs. 10,000/- for non compliance of the notices during the assessment proceedings.*

*7. The assessee filed an appeal of the said order before the ld. CIT(A)-a-1, Jaipur.*

*With reference to the above subject the Ground wise submissions of the case:*

*Submission on Ground No. 1:*

*“Under the facts and circumstances of the case the learned A.O. has erred in fact and law in imposing a penalty of Rs. 10,000/- under section 271(1)(b) of the I.T. Act, 1961, kindly delete the same”.*

*Assessee is an individual and during the year under consideration she has no taxable income*

*Further, assessee was not aware about the assessment proceedings, so the assessment order passed by the Ld. AO u/s 144 on ex parte basis.*

*All the notices were sent by the Income Tax Department at DAV Central School, Vaishali Nagar, Jaipur, where earlier assessee was in Job. But, when the proceedings was undergo, that time assessee settled in Behror (Alwar) and the address of assessee is W/o Gaurishankar, Hamidpur Road, Behror, Alwar, Rajasthan-301701. A copy of aadhar card is enclosed for your ready reference. So assessee could not aware about the assessment proceedings.*

*Further, assessee is also submitting that she will get to know about the assessment order and demand raised by the Income Tax Department, when the proceeding of recovery of demand was initiated by the income tax department. A copy of affidavit dated 13.10.2021 is enclosed for your ready reference.*

*ABACUS case law citation: ABACUS 2400 (2018) of ITAT*

*The assessee was not served with any of the notices issued by the AO due to the change of address and since the assessee had 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 had 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, the reasons explained by the assessee were bonafide and reasonable. Accordingly, the ITAT delete the penalty imposed under section 271(1)(b) of the I.T. Act for non compliance of section 142(1).*

*The assessee is relying on the following judgments:-*

*In the case of Kkhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust vs. ACIT 5DTR 429 (Delhi Tribunal) wherein the Coordinate Bench in paras 2.4 has held as under "2.4 Coming to the issue of recording of satisfaction, it may be mentioned that mere initiation of penalty does not amount to satisfaction as held by Hon'ble Delhi High Court in the case of CIT vs. Ram Commercial Enterprises Ltd. (2001) 167 CTR (Del) 321:*

*(2000) 246 ITR 568 (Del). In absence of recording of the satisfaction in the assessment order, mere initiation of penalty will not confer jurisdiction on the AO to levy the penalty.”*

*In view of the above submissions and position of law the penalty of Rs. 10,000/- is wrong and invalid in the eyes of law and deserves to be deleted.”*

6. The Id. CIT(A) observed that as under :

*“I carefully perused the ground of appeal, penalty order, assessment order, submission of the assessee and considered. Upon perusal of the facts of the case, it is seen that AO passed the assessment proceedings, notice u/s 142(1) dated 27.07.2015 was issued and duly served upon you on two different addresses on different dates i.e. at Jaipur address on 02.08.2015 and at Bahrod address on 02.08.2015. The assessee was non filer of return for A.Y. 2008-09 and the assessment was passed u/s 144 on the basis of material available on record. During the assessment proceedings, the AO took its best efforts to trace the assessee and to serve notices to her. Upon perusal of the submissions as well as judicial decisions the assessee relied upon, I did not find force in the plea of the assessee considering the facts in mind that the assessee did not get its address updated in PAN or file the return for the relevant previous year with her latest address of residence. Therefore, the penalty levied u/s 271(1)(b) of Rs. 10,000/- by the AO is upheld and the grounds of appeal raised in present appeal are dismissed.”*

7. Aggrieved by the CIT(A) order, the assessee is in appeal before us. Before the CIT (A), that the assessee has reiterated his submissions, which was not considered by the CIT(A). Before us, the Id. AR for the assessee submits a detailed submissions which was not considered by the Ld CIT (A).

8. On the other hand, Ld. DR strongly supporting the order of the CIT(A) and submitted that there is no merit in arguments taken by the Ld. AR of the assessee and the AO has rightly taken has a fit case for imposition of penalty U/S 271(1)(b) of the Act.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Ld AR of the assessee submitted documentary evidences of Aadhar Card and the Affidavit dated 13.10.2021 of the assessee and Written submission dated 19.10.2021 filed before CIT (A) .

9.1 We are of the view that the AO had levied the penalty @ Rs. 10,000/- for non compliance of notices Under section 142(1) of the Act. As it was 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..

9.2 Further we are of the opinion that assessee was not aware about the assessment proceedings, so the assessment order passed by the Ld. AO u/s 144 on ex parte basis. All the notices were sent by the Income Tax Department at DAV Central School, Vaishali Nagar, Jaipur, where earlier assessee was in Job. But when the proceedings was undergone at that time assessee settled in Behror (Alwar) and the address of assessee is W/o Gaurishankar, Hamidpur Road, Behror, Alwar, Rajasthan-301701 as per the Adhaar card also.

9.3 Further, we have perused the documentary evidence of assessee's Aadhar Card for the change of address and Affidavit of the assessee dated 13.10.2021 in which there was reasonable cause principle.

9.4 In our considered opinion, that the assessee was served with the notices issued by the AO which was not known by the assessee due to the change of addresses . Further considering the facts and circumstances of the case that the assessee had already furnished the current address in his letter dated 13.10.2021, the reasons explained by the assessee were bonafide and reasonable before the CIT (A) and which was not taken in consideration

9.5 Therefore, we set aside the order passed by Id. CIT(A) and the penalty imposed Under section 271(1)(b) of the Act for non compliance of Section 142(1) is deleted.

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

Order pronounced in the open Court on 04/04/2022.

Sd/

Sd/-

( राठोड कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member  
जयपुर / Jaipur

(एस.सीतालक्ष्मी)  
(Dr. S. Seethalashmi)  
न्यायिक सदस्य / Judicial Member

दिनांक / Dated:- 04/04/2022.

**\*Santosh**

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

1. अपीलार्थी / The Appellant- Asha Yadav, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(3), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 236/JP/2021 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar