

IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, PUNE

**SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI PARTHA SARATHI CHAUDHURY, JM**

I.T.A. No. 971/PUN/2018 : A.Y. 2012-13

Suyojit Infrastructure Pvt. Ltd.
Opp. Rajiv Gandhi Bhawan,
Sharanpur Road,
Nasik – 422 003
PAN: AAFCS 1381 N : Appellant

Vs.

The Asstt. CIT Central Cir. 2, Nasik : Respondent

Appellant by : None
Respondent by : Shri M.G. Jasnani

Date of Hearing : 02-05-2022
Date of Pronouncement : 09-05-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JM

This appeal preferred by assessee emanates from order of the Commissioner of Income Tax(A)-12, dated 28-03-2018 for A.Y. 2012-13 on the following ground of appeal.

“On the facts and the circumstances of the case and as per law, the CIT(A)-12 Pune is not justified in confirming the penalty of Rs. 10,000/- u/s 271(1)(b) of the Act.”

2. None appeared on behalf of the assessee. We therefore, proceed to decide this appeal on the basis of material available on record and hearing the submissions of the Id. D.R.

3. The assessee is a private limited company carrying on business of builders, land developers, contractors, etc. The assessee's case was selected for scrutiny and a notice u/s 142(1) of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) was issued on 04-08-2014 for the year under consideration requiring compliance on 19-8-2014 to which the assessee sought

for adjournment of 15-20 days. However, in the meantime, the A.O again issued a notice on 22-8-2014 requesting compliance by 19-09-2014. However, due to heavy load of tax audit work the assessee could not comply with this notice as well. Again the A.O issued another notice u/s 142(1) on 2-12-2014 for compliance on 10-12-2014, on which date the assessee along with written submissions stating that due to short period of time, sought for adjournment. However, according to the A.O there was no compliance from the side of the assessee and hence he levied penalty of Rs. 10,000/- u/s 271(1)(b) of the Act.

4. During the first appellate proceedings before the Id. CIT(A), there was no compliance from the side of the assessee. The Id. CIT(A) therefore, decided the appeal ex parte qua the assessee by observing as under:

3.2 I have perused penalty order and statement of facts and grounds of appeal filed by the appellant. Undisputed facts are that during the course of scrutiny proceedings, the AO issued notice *uls* 142(1) dated 04/08/2014 requiring the submission as per enclosed questionnaire by 19/08/2014. The appellant on 20/08/2014 sought adjournment of 15-20 days and subsequently another notice was issued *uls* 142(1) on 22/08/2014 requesting compliance by 19/09/2014 which was served on 26/08/2014. In response to this notice adjournment was sought. Another notice issued on 03/11/2014 requesting compliance by 17/11/2014. On 17/11/2014 neither any request for seeking further time was filed nor reply to notice was submitted. A fresh notice *uls* 142(1) was issued on 02/12/2014 requesting attendance on 10/12/2014 alongwith the book of accounts and vouchers on the basis of which the financial statements were prepared. Along with this notice a letter was also sent informing that non-compliance to this notice would initiate penal proceedings u/s 271(1)(b). On 10/12/2014 written submission was filed stating that the notice was received only three days before the fixed hearing date therefore sought adjournment. The AO levied penalty on account of failure comply with the notice *uls* 142(1) dated 02/12/2014 a show cause notice was issued *uls* 271(1)(b) of the IT Act on 11/12/2014 which was served on the same date. In response to this penalty show cause notice written submission dated 08/01/2015 stating that the notice was received only three days before the fixed hearing date and on that date adjournment was sought which was accepted by the A.O. and made compliances in group cases therefore required more time to comply to the notice dated 02/12/2014 and penalty initiated be dropped. The A.O. did not find the reply of the appellant acceptable. Thereafter the AO levied penalty of Rs 10,000/- *uls* 271 (1)(b) of the Act for non-compliance of notice issued *uls* 142(1).

During the appellate proceedings, the appellant failed to submit the reply till date even after affording several opportunities. This goes to show the casual approach of the appellant in complying with statutory notices of the department. I have perused the statement of facts filed by the appellant. There is no dispute that the AO had issued notices initially *uls* 142(1) to the appellant for compliance to the questionnaire alongwith books of accounts and documents vouchers on the basis of which the financial statements were prepared and return of income filed. The appellant did not fully comply with the requirements of questionnaire and till the date of passing of order he did not furnish the relevant documents required by the AO. As per provisions of section 271 (1)(b) the appellant had to show the sufficient and reasonable cause which prevented him to comply with the notice issued by the AO *uls* 142(1). Even after issuing five notices by this office the appellant neither bothered to appear nor filed any submissions to substantiate his claim in delay 1 non submission of the document as required by

the AO. Therefore, I hold that the AO was justified in imposing the penalty of Rs. 10,0001- u/s 271(1)(b) for failure to attend the hearing on 10/12/2014 and failure to comply with the requirements of the notice. Grounds raised by the appellant are hereby dismissed.”

5. After going through the material available on record and hearing the submissions of the Id. D.R., we find that the assessee had filed written submissions on 10-12-2014 stating therein that the notice was received only three days before the fixed date of hearing and therefore, sought an adjournment. However, the A.O levied penalty on account of failure to comply with the notice dated 2-12-2014. It cannot be said that the assessee did not comply with the notice dated 2-12-2014. In fact, the assessee filed written submissions on 10-12-2014, which is the date fixed for hearing vide notice dated 2-12-2014. The A.O has violated the principles of natural justice and levied the impugned penalty. Similarly, the CIT(A) has also not considered the material available on record. There is no doubt that the assessee did comply with the notice issued by the A.O dated 02-12-2014, however, seeking for an adjournment to prepare his case as there was no reasonable time given for attending the hearing. The A.O should have taken a much more practical approach in the light of upholding the principles of natural justice and should have given one more opportunity to the assessee. This is not at all a case where the assessee disregards or non-complies with the notice of the A.O. In such given circumstances, we do not find in this case penalty u/s 271(1)(b) should be imposed. We set aside the order of Id. CIT(A) accordingly and direct the A.O to delete the penalty u/s 271(1)(b) of the Act from the hands of the assessee.

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

Order pronounced in the Open court on 09th day of May 2022.

Sd/-
(R.S. SYAL)
VICE PRESIDENT

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, this 09th day of May 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT (A)-12 Pune
4. The Pr. CIT Central, Nagpur
5. The D.R. ITAT 'B' Bench, Pune.
5. Guard File

BY ORDER,

//// TRUE COPY ///

Sr. Private Secretary
ITAT, Pune.

1	Draft dictated on	05-05-2022	Sr.PS
2	Draft placed before author	05-05-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS	09-05-2022	Sr.PS
6	Kept for pronouncement on	09-05-2022	Sr.PS
7	Date of uploading of order	09-05-2022	Sr.PS
8	File sent to Bench Clerk		Sr.PS
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11	Date of dispatch of order		