

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1511/Ahd/2019
Assessment Year 2010-11**

Sri Devi Irukuvajjula B- 2301, Yashaskaram Plot 39 Sector 27 Kharghar, Raigarh (MH) Maharashtra-410210 PAN: AATPI1602B (Appellant)	Vs	The ITO, Ward-4, Mehsana (Respondent)
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Appellant by : None
Respondent by : Smt. Leena Lal, Sr.D.R.

Date of hearing : 30-05-2022
Date of pronouncement : 31-05-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeal has been filed by the Revenue against the order passed by the Commissioner of Income Tax (Appeals), Gandhinagar Ahmedabad, (in short referred to as CIT(A)), dated 07-08-2019, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act") ,deleting the levy of penalty of Rs. 10,000/- u/s. 271(1)(b) of the Act & pertaining to Assessment Year (A.Y) 2010-11.

2. As transpires from the orders of the authorities below, proceedings u/s. 147 of the Act were initiated on the assessee and all notices issued to it u/s. 148 and 142(1) of the Act remained uncomplied with resulting in assessment being framed u/s. 144 of the Act i.e. ex parte assessment. Due to non-compliance by the assessee of the notices issued to it, proceedings for levying penalty u/s. 271(1)(b) of the Act was initiated. Notices in relation to the same also remained uncomplied with and accordingly penalty amounting to Rs. 10,000/- was levied by the A.O. who held that the non-compliance of the notice issued for hearing in the penalty proceedings proved beyond doubt that the assessee had nothing to explain for the non-compliance of notice.

3. We have gone through the order of the Id. CIT(A) and we find that during appellate proceedings, the assessee was represented by her counsel and had explained to the Id. CIT(A) the reason for the continuous non-compliance by the assessee of the notices issued during assessment proceedings as also during penalty proceedings, as being the fact that they were all served to the assessee on addresses where she did not reside. That only when she became aware of a huge demand outstanding against her PAN that she became aware of the assessment orders and notices issued. That the non-compliance therefore was for bonafide reasons and no penalty therefore ought to be levied on the assessee for the same. The submission of the assessee in this regard at para 3.1 of the order of the Ld.CIT(A) is as under:

3.1 During the course of appellate proceedings, the appellant has submitted as under:-

"3. The AO has levied the penalty on presumption that there was a willful default on my part in complying with the notice issued on 08.06,2017 u/s 142(1). For the sake of clarity, following part of the penalty order is reproduced below:

"4. In response to the above show-cause notice, neither the assessee attended nor filed any reply explaining the reasons for the non-compliance of notice issued on 08.06.2017 till date. This proves beyond doubt that assessee has nothing to explain for the non-compliance of notice. The non-compliance of notice was willful and without any reasonable cause. 5. In view of above facts, I am satisfied that this is a case of willful non-compliance of notice issued u/s 142(1) of the IT Act. I therefore, impose a penalty of Rs. 10,000/- under the provisions of section 271(1) (b) of the I.T. Act, 1961 for willful non-compliance on the part of the assessee against the notice issued U/S 142(1) OF THE I.T. Act, 1961."

4. It is submitted that levy of penalty is grossly unjustified in the instant case. In this respect, following facts are placed for your kind perusal:

a) Notice u/s 148 dated 27.03.2017 for A Y 2010-11 was issued by the Ld. ITO Wd-4, Mehsana (hereinafter W) to me at my old address: A-401, Dream Heights, Plot No. 28, Sector 19, Kharghar, Navi Mumbai - 410210. However, I was staying at this address during the year 2009 to 2011. Therefore, notice u/s 148 was not received by me. Under the circumstances, there was no compliance and the return of income in response to the notice issued u/s 148 could not be filed.

b) Subsequently, notice u/s 142(1) dated 08.06.2017 and also the show cause notice u/s 271(l)(b) dated 14.11.2017 were issued by the AO at my above mentioned address of A-401, Dream Heights, Kharghar, Navi Mumbai. However, for the reasons cited above, the said notices were again not received by me; and hence, could not be complied.

c) Notice u/s 142(1) dated 09.11.2017 was issued by the AO at the address: Flat No. 801, 8th Floor, Jasper, A Wing, Hiranandani Estate, G B Road, Patlipada, Thane West, Maharashtra - 400 607. However, the said notice was also not received by me, as I was not residing at the said premises. For the sake of clarification, it may be mentioned that at the relevant time, I was residing at the address: B-2301, Yashaskaram, Plot No. 39, Sector 27, Kharghar -410210.

d) Notice dated 271(l)(b) dated 14.11.2017 was issued by the AO, asking the assessee as to why penalty u/s 271(l)(b) should not be levied for non compliance. However, the said notice was also issued at my old address of A-401, Dream Heights, Kharghar, Navi Mumbai and the same was again not received by me.

e) Also, the final show cause notice u/s 144 dated 27.11.2017 was issued by the AO at my old address: A-401, Dream Heights, Kharghar, Navi Mumbai-and hence not received by me.

f) As there was no compliance to the notices issued, the AO has passed assessment order u/s 144 26.12.2017, assessing total income at Rs.42,47,320/-. In the assessment order, the AO has made the following additions:

Sl. No	Description	Amount (Rs.)
1	Addition u/s 69 on investment in account of immovable property	41,22,500
2	Addition u/s 69 of financial on account transactions in shares with NSE	1,14,818
Total		42,37,318

g) The AO has also passed order u/s 271(l)(b) on 24.12.2017, levying penalty of Rs.10,000/. In the penalty order u/s 271(l)(b), the address of the assessee given is my old address:A-401, Dream Heights, Plot No. 28, Sector 19, Kharghar, Navi Mumbai - 410210. However, I was staying at this address during the year 2009 to 2011. Therefore, penalty order u/s 271(1) (b) was also not received by me.

h) Subsequently, I came to know about a huge demand outstanding against my PAN. Therefore, I requested the AO to provide copies of the assessment order and notice(s) issued. Vide letter dated 28.06.2018, the AO was kind enough to provide copy of the assessment order and also the order passed u/s 271(l)(b).

5. It is apparent that notices issued u/s 142(1) by the A O could not be complied, as they were not received by me. Thus, there is no willful default on my part, as alleged by the AO for levying penalty u/s 271(l)(b). As per section 273B, no penalty shall be imposed, if there is a reasonable cause for the failure mentioned in Section 271(1)(b).

Your honor is therefore requested to be kind enough to delete the penalty levied u/s 271(l)(b) of Income Tax Act. "

5. On going through the above and considering the facts of the case before us, we hold that there is no reason for levy of penalty u/s. 271(1)(b) of the Act. The assessee has explained the reason for non compliance stating that all notices were issued at the address where she did not reside and therefore were not received by her. The fact that the assessee was unresponsive in the entire assessment proceedings and even penalty

proceedings lends credence to her explanation. Further the present appeal filed before us mentions the new address of the assessee.

6. In view of these facts, it was impossible for the assessee to comply with the notices .The assessee had bonafide reasons for not complying with the same and therefore this is not a fit case for levy of penalty at all. The penalty so levied of Rs. 10.000/- is directed to be deleted.

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

Order pronounced in the open court on 31-05-2022

Sd/-
(TR SENTHIL KUMAR)
JUDICIAL MEMBER True Copy
Ahmedabad : Dated 31/05/2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद