

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

ITA.No.7500/Del./2019
Assessment Year 2010-2011

Sh Rajinder Kumar WH-75, Mayapuri Industrial Area Phase-1, New Delhi – 110 064. PAN AAIPK1398K	vs.	The Income Tax Officer, Ward 49 (3), New Delhi.
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Sh. Om Prakash, Sr. D.R.

Date of Hearing :	14.06.2022
Date of Pronouncement :	23.06.2022

ORDER

This appeal filed by the Assessee has been directed against the order of the Ld. CIT(A)-17, New Delhi, dated 22.07.2019 relating to the A.Y. 2010-2011.

2. The relevant facts as culled out from the material on record are as under :

2.1. The assessee is an individual. The A.O. has noted that assessee had not filed any return of income for the A.Y.

2011-12. The case was reopened and notice under section 148 dated 30.03.2017 was issued. Thereafter, various notices under section 142(1) were issued and served on the assessee, but, there was no compliance of the same. The A.O. thereafter passed the ex-parte assessment order under section 144 read with Section 147 dated 27.12.2017 determining the total income at Rs.13,46,336/- by inter alia making addition of Rs.11,13,706/- being the cash deposits in his bank account and addition of Rs.2,32,630/- being 5% of the aggregate bank credits amounting to Rs.46,52,604/-. The A.O. thereafter passed penalty order under section 271B wherein he levied penalty of Rs.23,263/- by holding that the bank credit of Rs.46,52,604/- in the assessee's bank account to be the total turnover which had exceeded the mandatory limit to get the books of accounts audited under section 44AB of the I.T. Act, 1961. He, therefore, held that since had failed to get his accounts audited, the assessee was liable for penalty under section 271B of the I.T. Act, 1961. He, accordingly levied the penalty.

2.2. Aggrieved by the order of the A.O. assessee carried the matter before the Ld. CIT(A) who vide order dated 22.07.2019 in Appeal No.10085/2018-19 upheld the action of A.O.

3. Aggrieved by order of Ld. CIT(A), the assessee is now in appeal before the Tribunal and has raised several grounds. The sole controversy raised by the assessee in its grounds of appeal are that no penalty notice were served upon the assessee.

4. On the date of hearing, none appeared on behalf of the assessee despite notice of hearing that was issued several times. We, therefore, proceed to dispose of the appeal ex-parte qua the assessee, after hearing the Ld. D.R.

5. Before us, at the outset, Ld. D.R. submitted that at the time of last hearing i.e., on 16.12.2021 the Revenue was directed to place on record the report as to whether notice under section 271B of the I.T. Act, 1961 was issued and served on the assessee. The Ld. D.R. placed on record the copy of the letter dated 31.01.2022 vide F.No.ITO/Ward-

49(1)/Misc/2021-22/816 wherein the A.O. has stated that no notice under section 271B read with section 274 of the I.T. Act, 1961 dated 27.12.2017 was issued to the assessee. He, therefore, submitted that considering the aforesaid letter of the A.O. appropriate orders be passed.

6. I have heard the Ld. D.R. and perused the material available on record. The issue in the present appeal is with respect to levy of penalty under section 271B of the I.T. Act, 1961. Since, no notice was issued and served on the assessee as admitted by the A.O. vide letter dated 31.01.2022 (supra), the purported penalty order dated NIL under section 271B made consequent thereto was without jurisdiction and liable to be quashed. Thus, the grounds of the appeal of the assessee are allowed.

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

Order pronounced in the open court on 23.06.2022.

Sd/-
[ANIL CHATURVEDI]
ACCOUNTANT MEMBER

Delhi, Dated 23rd June, 2022
VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	Ld. CIT(A) concerned
4.	CIT concerned
5.	DR ITAT "SMC" Bench, Delhi
6.	Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,
Delhi.