

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" A " BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

And

Ms. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 22/AHD/2022

निर्धारण वर्ष/Asstt. Year: 2012-2013

Praful Ravjibhai Patel, Patel Ni Nani Khadki, Pachhli Fari Chhantiyawad Limdi, Nadiad-387001. PAN: BIPPP1836D	Vs.	Commissioner of Income Tax, National Faceless Appeal Centre(NFAC), Delhi.
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(Applicant)		(Respondent)
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Assessee by :	None
Revenue by :	Shri Deelip Kumar, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : **15/06/2022**

घोषणा की तारीख /**Date of Pronouncement**: **24/06/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), dated 16/08/2021 arising in the matter of Assessment Order passed under s. 271(1)(b) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-2013.

2. When the matter was called for hearing it was noticed that there was none appeared on behalf of the assessee despite the fact that notice for hearing was also issued to at the given address. It is the trite law that assessee after filing the appeal should be vigilant enough to prosecute the same. But, we find that the assessee is not serious in pursuing the appeal filed by it. In the absence of any co-operation from the side of the assessee, we don't find any reason to keep the matter pending before us. Accordingly, we decide to proceed to adjudicate the appeal after hearing the learned DR appearing on behalf of the Revenue.

3. At the outset we note that there was a delay in filing the appeal by the assessee for 87 days. It was explained by the assessee that he is an agriculturist and stays in a village in Nadiad taluka. Likewise, he is not equipped with the knowledge of computer and tax laws consultants. Thus, the delay in filing the appeal has occurred. Hence, the assessee requested to condone the delay of 87 days in filing the appeal before the Tribunal. Considering the reasons and length of delay in filing the appeal by the assessee, the Id. DR raised no objection to condone the delay. Accordingly, we condone the delay and proceed to adjudicate the issue on merit.

4. The assessee raised following grounds of appeal:

1. *The Hon'ble CIT(A) has erred in law and in facts in imposing penalty Rs.30,000/- under section 271(1)(b) of the income tax Act 1961 for non-compliance of Income Tax Notice without having considered the reasonable cause given which is ignored and not mentioned in the order also. Therefore hereby in the interest of justice the said penalty levied to be deleted.*
2. *The appellant request to leaves to add to or alter the ground of appeal at or before the time of hearing of the appeal.*

5. The only issue raised by the assessee in this appeal is that Ld. CIT(A) erred in confirming the penalty order of AO u/s 271(1)(b) of the Act.

6. Briefly, the facts are that the assessee is an individual and claimed to be an agriculturist. The AO received information that the Assessee along other co-owner sold immovable property which was not disclosed in the income tax return. Therefore, to tax capital gain on the same, the notice under section 148 of the Act dated 16th December 2016 was issued on the assessee requiring him to file return of income. Thereafter six reminders on different dates were also issued by the AO for filing return of income but the assessee failed to file return. The AO during the course of assessment proceedings u/s 143(3) r.w.s. 147 of the Act issued as many as six notices u/s 142(1) of the Act on various dates being last one as on 11th September 2017 and show cause notice dated 5th October 2017 and 4th December 2017 but the assessee failed to comply the same. In view of above, the AO initiated penalty proceedings u/s 271(1)(b) of the Act for the failure of the assessee to comply with notice dated 11th September, 5th October and 4th December 2017 but again there was no response from the side of the assessee. Finally, the AO imposed the penalty for ₹ 30,000/- for each defaults committed by the assessee as discussed above under the provisions of section 271(1)(b) of the Act.

7. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who confirmed the order of the AO by observing that the Assessee in his submission, made during appellate proceeding, only disputed the addition made by the on merit and no submission or argument forwarded with regard to penalty proceedings.

8. Aggrieved by this, the assessee has come up in appeal before us.

9. The learned DR before us vehemently supported the order of the authority below.

10. We have heard the learned DR and perused and carefully considered the materials on record. At the outset it was observed that in the identical facts and circumstances, the Delhi Tribunal has decided the issue in favour of assessee in part in the case of *Smt. Rekha Rani Vs. DCIT in ITA No. 6131/DEL/2013* by observing

that penalty for the first default of non-compliance of notice under section 142(1) of the Act was sufficient enough. The relevant extract of the order reads as under:

5. We have considered the submissions of learned DR and have perused the order of the Assessing Officer and the learned CIT(A). we find that there was no reasonable cause on the part of the assessee for not appearing on the different dates of hearing before the Assessing Officer in response to notice issued under Section 143(2) of the Act. However, we find that the default is same and, therefore, penalty of Rs. 10,000/- could be imposed for the first default made by the assessee in this regard. The penalty under Section 271(1)(b) could not be imposed for each and every notice issued under Section 143(2), which remained not complied with on the part of the assessee. The provision of Section 271(1)(b) is of deterrent nature and not for earning revenue. Any other view taken shall lead to the imposition of penalty for any number of times (without limits) for the same default of not appearing in response to the notice issued under Section 143(2) of the Act. This does not seem to be the intention of the legislature in enacting the provisions of Section 271(1)(b) of the Act. In case of failure of the assessee to comply with the notice under Section 143(2) of the Act, the remedy with the Assessing Officer lies with framing of "best judgement assessment" under the provisions of Section 144 of the Act and not to impose penalty under Section 271(1)(b) of the Act again and again. In this view of the matter, we restrict the penalty levied under Section 271(1)(b) of the Act to the first default of the assessee in not complying with the notice under Section 143(2) of the Act. Accordingly, the penalty imposed is restricted to Rs. 10,000/- as against Rs. 50,000/- confirmed by the learned CIT(A). The grounds of appeal of the assessee are thus partly allowed.

11. Respectfully following the aforesaid order of Delhi Tribunal, we set aside the order of Ld. CIT(A) and direct the AO to delete the penalty to the tune of ₹ 20,000/- and confirm the penalty of ₹ 10,000/-only. Hence, this ground of assessee's appeal is partly allowed.

12. In the result, the appeal of the assessee is **partly allowed**.

Order pronounced in the Court on 24/06/2022 at Ahmedabad.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
24/06/2022