

IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM

आयकर अपील सं/ I.T.A. No.1909/Mum/2021

(निर्धारण वर्ष / Assessment Years: 2012-13)

RIA Cetp Co-operative Society Ltd RIACETP Co-op. Ltd. Plot No.6, Bldg, Dhatav MIDC Roha C/o Adv. N. A. Kulkarni Wadal Building, 1 st Floor, Near DNS Bank, Manpada Road, Dombivli (E)- 421201.	बनाम/ Vs.	ITO, Ward-1 3 rd Floor, Trifed Tower, Opp. Khanda Colony, New Panvel
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABAR0138A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by:	Shri Ashish Deharia (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 08/06/2022

घोषणा की तारीख /Date of Pronouncement: 28/06/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee society against the order of the Ld. Commissioner of Income Tax (Appeals) (NFAC), Delhi dated 23.09.2021 for the assessment year 2012-13 against confirmation of penalty u/s 271(1)(b) of the Income Tax Act, 1961 (hereinafter “the Act”).

2. None appeared for the assessee. We note that the despite listing the appeal several times and even though notices were issued, none appeared for the assessee. The impugned penalty of Rs.20,000/- has been confirmed by the Ld. CIT(A), which was levied by the AO for failure of assessee to comply/respond to the notices issued by him u/s 142(1) of the Act. Even though, non-appeared on behalf of assessee



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before us, we find that written submission on its behalf has been filed. We note from the letter of Advocate N. A. Kulkarni (submission in writing) dated 13.03.2022 there is no averments regarding any *reasonable cause* for the assessee not to respond to the notice issued by AO u/s 142(1) of the Act, on the following dates: -

Notice u/s	Issued on	Speed Post No.	Date
(i) 142(1)	26.05.2017	EM.76115170IN	02.06.2017
(ii) 142(1)	12.09.2017	EM833437042IN	13.09.2017

The AO notes that he has sent not only notices through *speed post*, he also had duly sent the same to *Email ID* of the assessee; and since the notice sent by speed post have not been returned by the postal authorities, the AO presumed that the assessee has been duly served with the notices u/s 142(1) of the Act and despite that, the assessee has not bothered to respond/give any reply to the details/queries called for by him. Since the assessee did not respond to the statutory notices issued by him, AO had no other alternative but to frame the best judgment assessment u/s 144 of the Act by making an addition of Rs.36,58,456/- in place of the 'Nil' income returned by the assessee society. From the written statement filed before us it is discerned that the assessee's appeals against the action of AO in the quantum assessment u/s 144 of the Act has been dismissed at the level of this Tribunal. We further note that the AO while initiating the penalty u/s 271(1)(b) of the Act had issued show cause notice to the assessee and asked as to why the penalty u/s 271(1)(b) of the Act should not be levied on it. Even, we find that the said show cause notices invoked no



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response from the assessee. In the impugned order, the Ld. CIT(A) notes that the only response of the assessee against levy of penalty was that it was not liable to reply to notice u/s 142(1) of the Act and thereby it did not even bring to his notice any “reasonable cause” for not responding/answering to the statutory notice u/s 142(1) of the Act. Since from the contents of the written submission filed by us, we note that the assessee has not refuted receipt of the notices u/s 142(1) of the Act issued by AO on two occasion (supra) and has neither stated to have replied to it nor brought to our notice any *reasonable cause* for non-levy of penalty u/s 271(1)(b) of the Act, we have no other alternative but to confirm the order of the Ld. CIT(A) who held as under: -

“5.1 I have considered the facts and circumstances of the case, penalty order, submissions of the appellant and material available on record. Only issue is regarding levy of penalty of Rs.20,000/- u/s 271(1)(b) of the IT Act, 1961 for non-compliance of statutory notices u/s 142(1). Ongoing through the penalty order, it is revealed that the A.O. has given ample opportunities by way of issue of notices on different dates. Notice was issued u/s 274 r.w.s. 271(1)(b), for non-compliance of statutory notice issued u/s 142(1) of the Act. With regard to the ground of appeal, appellant has e-filed written submission. The assessment was finalised by AO u/s 144 rws 147 of the I T Act, 1961 as the appellant failed to comply with the statutory notices issued u/s 142(1) of the I.T. Act, 1961. Penalty proceedings u/s. 271(1)(b) was also initiated and notice u/s. 274 r.w.s. 271(1)(b) was issued. However, the appellant has once again failed to comply. Failure to comply with the notice u/s 274 r.w.s 271(1)(b), shows that the appellant has no explanation to offer in this matter.



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5.2 Before undersigned appellant has contended that it was not liable to reply to notice u/s 142(1). I fail to understand as to how and why appellant could chose not to reply to notice u/s 142(1). Even if the accounts of the appellant are in order it is its duty to satisfy the AO regarding the issues raised by AO while reopening the assessment. Further, no reason is cited by the appellant as to why it did not reply to notice u/s 271(1)(b). As such the appellant has failed to establish any reasonable cause(s) for not complying with the notices issued U/s 142(1) of the Income-tax Act,1961 and, thus, the levy of penalty is not saved by section 273B of the Income-tax Act,1961. I am satisfied that the appellant has committed default under the provisions of section 271(1)(b) of the I.T. Act,1961. without reasonable cause. Penalty of Rs.20,000/-, levied u/s. 271(1)(b) of the I.T. Act, 1961 for failure to comply with the notices u/s 142(1), without reasonable cause, on two occasions @ Rs 10,000/- for default on each occasion, has been rightly levied. Decision of the AO is upheld.”

3. In the light of the aforesaid discussion, we confirm the order of the Ld CIT(A).

4. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on this 28/06/2022.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 28/06/2022.
Vijay Pal Singh, (Sr. PS)



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai