

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA BENCH "A", KOLKATA**

**BEFORE SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No.147/Kol/2022  
Assessment Year: 2016-17**

Amiya Gopal Dutta  C/o. S.N. Ghosh & Associates, Advocates, 2, Gastin Place, 2 <sup>nd</sup> Floor, Suite No. 203, Off Hare Street, Kolkata – 700001.  <b>PAN: ADBPD 9197 P</b>	Vs.	ACIT, CIRCLE-1(1), JPG
(Appellant)		(Respondent)

**Present for:**

Appellant by : Shri Somnath Ghosh, Advocate  
Respondent by : Shri Biswanath Das, ACIT

Date of Hearing : 12.07.2022  
Date of Pronouncement : 20.07.2022

**ORDER**

**PER SONJOY SARMA, JM:**

This is an appeal preferred by the assessee for A.Y. 2016-17 is directed against the order of Id. CIT(A), National Faceless Appeal Centre dated 28.10.2021 u/s 271(1)(b) of the Income-tax Act, 1961. The assessee has taken the following grounds of appeal:

*"1. FOR THAT in the facts and circumstances of the instant case, the Ld. Commissioner of Income Tax (Appeals), NFAC acted unlawfully in not appreciating that the conditions precedent for framing the order imposing penalty u/s. 271(1)(b) of the Income Tax Act, 1961 on 27-06-2019 were not complied with and/or fulfilled for the Ld. Assistant Commissioner of Income Tax, Circle 1(1), Jalpaiguri in the present context and his purported action on that behalf are absolutely is ab initio void, ultra vires and ex-facie null in law.*

*2. FOR THAT the Ld. Commissioner of Income Tax (Appeals), NFAC erred in upholding the validity of the impugned order imposing penalty u/s. 271(1)(b) of the Act framed by the Ld. Assistant Commissioner of Income Tax, Circle 1(1), Jalpaiguri, emanating out of the order u/s. 144 of the Income Tax Act, 1961 passed in absolute contravention of the C.B.D.T. Instruction No. 1/2011 dated 31-01-2011*

*and the purported action on that behalf is altogether unfounded, unjustified and untenable in law.*

*3. FOR THAT the Ld. Commissioner of Income Tax (Appeals), NFAC misread, evidence, considered improper facts, failed to consider proper position in law in upholding the impugned levy of Rs. 50,000/- on account of penalty u/s. 271(1)(b) of the Act imposed by the Ld. Assistant Commissioner of Income Tax, Circle 1(1), Jalpaiguri for failure to comply with the contents of notices issued beyond the scope and ambit of the notice issued u/s. 143(2) of the Income Tax Act, 1961 for "Limited Scrutiny" in the facts and circumstances of the instant case and the flawed action on that behalf is wholly illegal, illegitimate and infirm in law.*

*4. FOR THAT on a true and proper interpretation of the scope of the provisions of s. 271(1)(b) of the Income Tax Act, 1961, the Ld. Commissioner of Income Tax (Appeals)-NFAC was absolutely in error in upholding the impugned order imposing penalty in the sum of Rs. 50,000/- passed by the Ld. Assistant Commissioner of Income Tax, Circle 1(1), Jalpaiguri without considering the reasonable cause in light of the provision of s. 273B of the Income Tax Act, 1961 and the specious findings considering extraneous parameters not germane to the issue is therefore, unfounded, unjustified and untenable in law.*

2. At the time of hearing, the registry has informed that there is a delay of 86 days filing this instant appeal. However, the assessee explained the reasons for delay and considering the same, we condone the delay as prayed by the appellant.

3. The ld. DR submitted that the sole issue in this appeal of the assessee regarding validity of penalty imposed u/s 271(1)(b) of the Income-tax, 1961 amounting to Rs. 50,000/- confirmed by the ld. CIT(A). The ld. AR further submitted that the assessee residing in remote area in the district of Jalpaiguri and has no knowledge about the particulars of completed legislation like Income-tax Act and he could not appear before the AO. Further certain notices were issued through E-portal which he could not access due to his lack of computer knowledge. The ld. AR further submitted that the Assessing Office has issued notice u/s 142(2) of the Act on five different dates and the assessee failed to comply with the same due to above reasons, accordingly, the Assessing Officer has invoked the provisions of section 271(1)(b) of the Act and imposed penalty of Rs. 10,000/- for each default totaling to Rs. 50,000/-. The ld. AR also submitted that the assessee has reasonable cause for not appearing on the date of hearing fixed before the AO. On the other hand, the ld. DR relied on the order of AO and ld. CIT(A).

4. We have considered the rival submissions of the parties and have perused the order of the Assessing Officer and the learned CIT(A). We find that there was a 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 10,000/- could be imposed for the first default made by the assessee in this regard. Moreover, certain notices were issued through E-portal, which the assessee could not access due to his lack of computer knowledge. In this view of the above, 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 `10,000/- as against `50,000/- confirmed by the learned CIT(A). The grounds of appeal of the assessee are thus partly allowed.

5. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the open court on 20.07.2022.**

**Sd/-**  
**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SONJOY SARMA)**  
**JUDICIAL MEMBER**

Kolkata, Dated: 20.07.2022.  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Amiya Gopal Dutta.
2. The Respondent: ACIT, CIR-1(1), JPG.
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata