

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM

आयकर अपील सं/ I.T.A. No.2412/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2016-17)

Navin Agarwal Villa No.18, Palava Golf Links, Kalyan Shil Road Dombivali (E), Thane- 421204.	बनाम/ Vs.	Circle-35(2)/AO NFAC Delhi-110001.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEKPA7396F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Mahesh Saboo
Revenue by:	Shri Chetan M. Kacha (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 18/07/2022

घोषणा की तारीख /Date of Pronouncement: 22/07/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/(NFAC), Delhi dated 16.12.2021 for the assessment year 2016-17 against the penalty confirmed u/s 271(1)(b) of the Income Tax Act, 1961 (hereinafter "the Act").

2. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the action of the AO levying penalty u/s 271(1)(b) of the Act to the tune of Rs.10,000/-.

3. The brief facts are that the assessee had filed return of income on 17.03.2017 declaring total income at Rs.98,76,030/-. Later, the case of the assessee was selected for scrutiny assessment under CASS and the AO issued statutory notices u/s 143(2) & 142(1) of the Act. According to the AO, during the course of assessment proceedings, the notice u/s 142(1) of the Act dated 29.11.2018 was issued and duly



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served upon the assessee through the ITBA Portal. According to the AO, the date of compliance to this notice was fixed on 03.12.2018. However, the assessee failed to file any submission before the stipulated time/date. Therefore, penalty proceedings u/s 271(1)(b) of the Act was initiated by notice dated 15.12.2018 for non-compliance of notice dated 29.11.2018. According to the AO, he issued another penalty notice dated 06.06.2019 asking the assessee to show cause as to why the penalty u/s 271(1)(b) of the Act should not be levied. Pursuant to the notice, the AO acknowledges that the assessee filed its submissions pleading for non-levy of penalty. However, according to the AO, the response was not acceptable. Therefore, the AO was of the opinion that it was a fit case to levy penalty of Rs.10,000/- and levied it by order dated 22.06.2019. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who confirmed the same. Aggrieved, the assessee is before us.

4. We have heard both the parties and perused the records. Assailing the action of AO levying penalty the Ld. AR drew our attention to the assessment order passed by the AO dated 24.12.2018 wherein the AO has admitted in his own words that *“further, notices u/s 142(1) of the Act dated 29.09.2018, 29.11.2018 along with detailed questionnaire was issued. In response to the said notice, the assessee furnished the details in E-Procedure Portal.”* Having acknowledged this fact that the assessee had complied with the notice and especially the notice dated 29.11.2018 (*for non-compliance the impugned penalty was levied*) it can be seen that the AO being satisfied with the reply of the assessee, has accepted the return of income filed by the assessee.



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So, therefore, according to the Ld AR, it can be seen from the assessment order that the pursuant to the notice u/s 142(1) of the Act dated 29.09.2018 and 29.11.2018, the assessee had filed his reply and furnished the details in the E-Procedure Portal and after going through the same, the AO being satisfied has accepted the return of income filed by the assessee. In the aforesaid facts, according to Ld AR, the question of levying penalty u/s 271(1)(b) of the Act for non-compliance of notice u/s 142(1) of the Act dated 29.11.2018 does not arose, and therefore it may be deleted.

5. Per contra, the Ld. DR supported the action of the Ld. CIT(A) and does not want us to interfere.

6. Having heard both the parties and after perusal of the records, we note that the penalty u/s 271(1)(b) of the Act has been levied on the assessee for failure to comply with notice u/s 142(1) of the Act dated 29.11.2018. However, from perusal of the assessment order dated 24.12.2018 it is noted that the AO had issued notice u/s 142(1) of the Act dated 29.09.2018 and 29.11.2018 through ITBP Portal and the AO himself acknowledges that the assessee had complied with the requirements/requisitions called for by him by filing the details in E-Procedure Portal. And further it is noted that the AO being satisfied with the reply of the assessee has accepted the return of income filed by the assessee as it is by passing assessment order u/s 143(3) of the Act dated 24.12.2020. Thus, it is evident that the assessee has complied with the notice u/s 142(1) of the Act dated 29.11.2018. And therefore in the aforesaid facts and circumstances, the penalty levied u/s 271(1)(b) of the Act for non-compliance of notice dated



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29.11.2018 was not warranted and the Ld. CIT(A) erred in confirming the same. Therefore, we are inclined to delete the penalty.

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

Order pronounced in the open court on this 22/07/2022.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 22/07/2022.

Vijay Pal Singh, (Sr. PS)

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