

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

ITA NOS. 1199/MUM/2022

:

A.Ys : 2013-14

Naresh Mehta
394-B, Gupta Nivas, 1st floor,
Block No. 7, Bhav Daji Road,
Matunga, Mumbai 400 019
PAN : AAEPM4671M (Appellant)

Vs. Dy. Commissioner of Income
Tax (Appeals)-50, 3rd Floor,
Earnest House, NCPA Marg,
Nariman Point, Mumbai –
400 021. (Respondent)

Appellant by : Shri Haresh Joshi

Respondent by : Shri Chetan M. Kacha

Date of Hearing : 08/08/2022

Date of Pronouncement : 08/08/2022

ORDER

Per Amit Shukla, Judicial Member :

The aforesaid appeal has been filed by the assessee against the impugned order of dated 28.03.2022, passed by learned Commissioner of Income Tax (Appeals)-50, Mumbai (in short 'CIT(A)') in relation to proceedings under Section 271(1)(b) of the Income Tax Act, 1961 (in short 'the Act') by levying penalty of Rs.10,000/-.

2. Facts in brief emanating from the appellate order is that in the course of assessment proceedings under Section 153A/143(3) of the Act for the aforesaid assessment years, the Assessing Officer had issued notice under Section 142(1) on 17.12.2020 asking for various details from the assessee. The notice was served electronically and according to the Assessing Officer,

assessee had filed part submissions or has not filed detailed submissions to explain the case. While levying penalty the Assessing Officer has observed as under :-

“3. Despite issuing penalty show cause for non-compliance the assessee has not filed all points/questionnaire asked in notice u/s 142(1) of the I.T. Act. Therefore, the assessing officer has left with no other option but to levy the penalty in this case. As the assessee has not bothered to respond the notice(s) issued in this case therefore, the undersigned assessing officer is satisfied that this is a fit case for levy of penalty u/s 271(1)(b) and hereby levy a penalty of Rs.10,000/- u/s 271(1)(b) for failing in complying with notice(s) issued under section 142(1) of the Income Tax Act, 1961. issue. Demand notice and Challan accordingly.”

3. The Id. CIT(A) has confirmed the penalty simply stating that the appellant-assessee has failed to avail the opportunity of being heard offered by the Assessing Officer and assessee cannot be said to be aggrieved person in terms of provisions of Section 246A of the Act.

4. This precise issue and on same facts is covered by the decision of Tribunal in assessee's own case for AY 2014-15 to 2019-20, wherein it was held as under:-

“4. A perusal of the submissions which was rendered before the Assessing Officer and Id. CIT(A), as incorporated in the appellate order, shows that the assessee had stated that, due to pandemic situation of Covid-19, the movement and attendance of the staff of authorised representatives and Chartered Accountant's was seriously affected. There was practical difficulty in all these appeals as either the staff or their family members were infected with Covid and, therefore, even if part compliance was made, it was not a case for levy of penalty under Section 271(1)(b) of the Act.

5. *Once the assessee has given such a reason and during that time the entire country was going through the pandemic situation of Covid-19 restrictions and despite that, assessee has made part compliance and later on, assessment has been completed under*

Section 153A/143(3) of the Act, then we do not find any reason as to why such a harsh step of initiating and levying of penalty under Section 271(1)(b) of the Act should be imposed for part non-compliance. In fact, the Hon'ble Supreme Court taking cognisance of the pandemic situation had extended the time limit from 15.03.2020 till 28.02.2022, though for the purpose of limitation. Now, the Assessing Officer is alleging that the assessee did not fully comply with notice dated 09.01.2021 and even the Id. CIT(A) did not find it to be reasonable cause, which in our opinion is a too stringent view under these circumstances. Accordingly, we hold that there was sufficient reasonable cause within the ambit and scope of Section 273B of the Act and, therefore, penalty levied under Section 271(1)(b) of the Act of Rs.10,000/- in the assessment year is directed to be deleted."

5. Accordingly, on same reasoning, penalty u/s 271(1)(b) is deleted.
6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 08.08.2022.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date : 08.08.2022

Dhananjay, Sr.PS

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai
- 6) Guard file

By Order

Asstt. Registrar/Sr. Private Secretary
I.T.A.T, Mumbai