

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, AHMEDABAD**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 274/Ahd/2022  
(Assessment Year: 2016-17)

Kalubhai Arjanbhai Patel (HUF) 717, Surjit Society India Colony Road, Thakkar Bapa Nagar, Ahmedabad-382350	Vs.	ITO Ward-7(2)(2), Ahmedabad
[PAN No. AAEHP0886R]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	None
<b>Respondent by :</b>	Shri N. J. Vyas, Sr. DR
<b>Date of Hearing</b>	31.08.2022
<b>Date of Pronouncement</b>	14.09.2022

ORDER

**PER Ms. SUCHITRA KAMBLE - JM:**

This appeal is filed by the assessee against the order dated 30.05.2022 passed by the Ld. CIT(Appeals), National Faceless Appeal Centre (in short “NFAC”) for A.Y. 2016-17.

2. The grounds of appeal raised by the assessee read as under:

*“1. The ld. CIT(A) National Faceless Appeal Centre, Delhi has erred in law and on the facts of the case in confirming the action of ld. AO in levy of penalty under S.271(1)(b) of the Act without seeing that notice under S.142(1) dated 05/10/2018 and show-cause notice dated 31/10/2018 were not properly served to the appellant. Under the facts and circumstances of the case penalty under S.271(1)(b) may be deleted in the interest of justice.*

*2. That your appellant reserve right to amend/alter/modify any ground or grounds during the pendency of the appeal.”*

3. The assessee is an agriculturist. The assessee declared agricultural income in the past which was accepted by the Income Tax Department.

A show-cause letter was issued on 31.10.2018 to the assessee directing to explain why penalty on Section 271(1)(b) of the Act should not be imposed for violation of statutory notices. The assessee has not responded to the notice as well as not filed the requisite reply/submissions. Hence, the AO passed order under Section 271(1)(b) of the Act thereby imposing cost of Rs. 10,000/-.

4. Being aggrieved by the penalty order the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal of the assessee.

5. At the time of hearing none appeared on behalf of the assessee. Notice was issued and duly served to the assessee but none appeared and no new address for correspondence was given to the registry. Therefore, we are proceeding on the basis of submissions made before the Ld. CIT(A) by the assessee as submission before us.

6. The Ld. DR relied upon the penalty order and the order of the Ld. CIT(A).

7. We have heard Ld. DR and perused all the relevant materials available on record. It is pertinent to note that the observations made by the AO that no return of income was filed appears to be incorrect as the assessee has filed return of income after perusal of the submissions. The assessee has not received notices physically as being notices through email was not seen by the assessee and therefore, ex-parte order was passed. The assessee has only received penalty order through tax

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consultant and therefore, could not explain as to why he could not file the requisite details before the AO during the assessment proceedings. This cannot be stated as non-cooperation on part of the assessee for giving details. Therefore, this is not a default on part of assessee in complying statutory notice issued under Section 143(2) of the Act. Thus, the case of the assessee does not fall under the purview of Section 271(1)(b) of the Act. Therefore, we delete the penalty.

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

<b>This Order pronounced in Open Court on</b>	<b>14/09/2022</b>
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Sd/-  
(Ms. SUCHITRA KAMBLE)  
JUDICIAL MEMBER

Ahmedabad; Dated 14/09/2022

TANMAY, Sr. PS

**TRUE COPY**

**आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :**

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad