

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 75/Rjt/2020  
Assessment Year 2011-12**

Rashmin K. Dhaduk Opp. Aveda Street, 104 Pithadiya, Beside Devdeep Nagar, Jetpur, Rajkot  PAN No: APCPD6330D  (Appellant)	Vs	The ITO, Ward- 1(2)(3), Rajkot  (Respondent)
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**Appellant by : Written Submission  
Respondent by : Shri B.D. Gupta, Sr.D.R.**

Date of hearing : 22-09-2022  
Date of pronouncement : 07-10-2022

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee against the order dated 10.02.2020 passed by the Commissioner of Income Tax (Appeals)-1, Rajkot as against confirming of penalty levied u/s. 271(1)(b) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2011-12.

2. The brief facts of the case is that the assessee is an individual who was not filed the Return of Income for the Assessment Year 2011-12. The assessee was issued a notice u/s. 148 of the Act on 23.03.2016 which was duly served upon the assessee. Thereafter notices u/s. 142(1) were issued on 23.03.2016 and 31.05.2016 requesting the assessee to comply the same. However no reply was received.

2.1. Further a notice dated 05.08.2016 was issued which was refused to accept by the assessee. Therefore a final show cause notice was issued dated 11.11.2016 as why not an ex-parte assessment order be passed with the assessee's case and fixed the case for hearing on 30.11.2016. For this final notice also, the assessee neither replied with nor filed any adjournment letter. Therefore an ex-parte assessment order passed u/s. 144 r.w.s. 147 of the act on 30.11.2016. Considering the non-cooperative attitude of the assessee, penalty proceedings u/s. 271(1)(b) was also initiated by the ld. A.O. The assessee replied that the quantum appeal is pending before the ld. CIT(A)-1, Rajkot. Therefore to keep the penalty proceedings pending till final disposal of the appeal. The ld. A.O. rejected the said reply on the ground that u/s. 271(1)(b) penalty is for non-compliance of the notices, it has no relevance to the pending appeal before the ld. CIT(A) which is on the quantum addition. Therefore keeping in mind of the fact, the Ld. A.O. levied a minimum penalty of Rs. 10,000/- u/s. 271(1)(b) of the Act.

3. Aggrieved against the same, the assessee filed an appeal before the ld. CIT(A). Before the Ld. CIT(A), the assessee claimed that medically not fit to make compliance to the notice issued by the A.O. and requested to delete the penalty. The Ld. CIT(A) called for a remand report from the Assessing Officer and thereafter confirm the penalty levy of penalty is as follows:

*“Brief facts of the case are that notice u/s 148 and 142(1) as mentioned in Para 2 of the penalty order were not complied by assessee. One of the notices i.e. notice u/s 142(1) dated 05.08.2016 was received back 'with comments "refused to accept". In these facts and circumstances of the case AO has levied penalty of Rs. 10,000/- with respect to one notice u/s 142(1) dated 31.05.2016. The assessee contended that the impugned notice dated 31.05.2016 was not issued/served the assessee. The report was sought from the assessing officer on this contention of the assessee. The AO vide his report forwarded by Add. CIT, Range-1(2), Rajkot vide his letter dated 09.01.2020 has reiterated that notice dated 31.05.2016 has been duly served upon the assessee as per his records. The assessee in his rejoinder dated 29.01.2020 has contended that AO has not mentioned anything regarding notice dated-11.11.2016 for which the penalty is levied.*

*Having considered the facts and circumstances of the case I find that the impugned penalty has been levied with respect to notice u/s 142(1) dated 11.11.2016 service of which has been confirmed by the AO as per his record and this fact is not adversely commented upon in the rejoinder. The service of notice dated 31.05.2016 to which the rejoinder of the assessee refers has no relevance to the impugned penalty. Since the service of the notice dated 31.05.2016 and its non-compliance is not denied, the impugned penalty is confirmed. The grounds of appeal are rejected.”*

4. Aggrieved against the same, the assessee is in appeal before us raising as many as 12 grounds and requested to cancel the levy of penalty. None appeared on behalf of the assessee but a written submission filed by the assessee is on record before us. In the written submission, it is claimed that the assessee was not well between 16.06.2016 to 21.06.2016, so he could not comply with the notice fixed for hearing on 19.06.2016 and relying upon a

Medical Certificate submitted to the Ld. CIT(A) and therefore requested to delete the penalty.

5. Per contra Ld. D.R. appearing for the Revenue submitted that though the assessee has not responded to the u/s. 148 notices and other notices, the minimum penalty of Rs. 10,000/- only levied by the A.O. The assessee neither responded to the notices nor filed any adjournment letter before the A.O. Therefore it is a clear cut case of levying penalty for non-compliance of the notice issued by the A.O. u/s. 271(1)(b) of the Act.

6. We have given our thoughtful consideration and perused the materials available on record including the written submission filed by the assessee. Ld. CIT(A) confirm the levy of penalty after calling for the remand report from the A.O. and rejoinder filed by the assessee that the service of notice u/s. 142(1) dated 11.11.2016 was not adversely commented by the assessee. However the service of notice dated 31.05.2016 and its non-compliance is not denied by the assessee. We therefore confirm the levy of penalty u/s. 271(1)(b) of the Act. Further we find that the so called medical certificate was not filed before the A.O. and A.O. was being forced to pass a best judgment assessment order u/s. 144 r.w.s. 147 on 30.11.2016. Therefore there is devoid of merits in the claim of the assessee. Therefore the same is rejected and the findings of the Ld. CIT(A) does not require any interference and levy of penalty u/s. 271(1)(b) is hereby confirmed.

8. In the result, the appeal filed by the Assessee is hereby dismissed.

Order pronounced in the open court on 07-10-2022

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 07/10/2022**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
राजकोट