

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**“A” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA.NO.2096/MUM/2022 (A.Y: 2012-13)**

Capco Finance & Investment Pvt Ltd 103, Gateway Plaza, Hiranandani Garden Powai,, Mumbai, Maharashtra, 400076  <b>PAN: AABCC8254A</b>	<i>v.</i>	National Faceless Appeal Centre, Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>None</b>
<b>Department by</b>	<b>:</b>	<b>Shri Manoj Sinha</b>
<b>Date of Hearing</b>	<b>:</b>	<b>28.09.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>30.09.2022</b>

**ORDER**

**PER AMIT SHUKLA (JM)**

1. The aforesaid appeal has been filed by the assessee against order dated 29.06.2022 passed by Learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (in short 'Ld. CIT(A)') in relation to the penalty proceedings

u/s 271(1)(b) of the Income Tax Act, 1961 (in short 'the Act') for Assessment Year 2012-13.

**2.** In its grounds of appeal, assessee has challenged levy of penalty of Rs.10,000/- u/s 271(1)(b) of the Act. Facts in brief are that the assessee-company for the relevant Assessment Year 2012-13 had not filed return of income as the said company got dissolved and its name was struck off from the Register from 03.05.2012 vide notice u/s 560(3) of the Ministry of Corporate Affairs. Notice u/s 148 of the Act was issued on 22.03.2019 on the ground that assessee has deposited sum of Rs.14,12,050/- in the bank account in Financial Year 2011-12. The assessee had duly brought to notice of the Assessing Officer through its Chartered Accountant vide letter dated 07.09.2018 that the company's name has been struck off from the Register from 03.05.2012. However, despite that Assessing Officer has made the addition of Rs.14,12,050/- in the name of non-existent company on 20.12.2019. From the perusal of penalty order it is seen that the Assessing Officer has noted that notice u/s 142(1) of the Act was issued on 09.07.2019 wherein assessee was required to furnish online submission within time limit, however, assessee failed to comply with such notice. Accordingly, he issued show cause notice u/s 271(1)(b) of the Act, which also was not complied with. Therefore, he levied penalty of Rs.10,000/- for non-compliance of such notice.

**3.** On perusal of the assessment order dated 20.12.2019 it is seen that nowhere the Assessing Officer had initiated penalty proceedings u/s 271(1)(b) of the Act. The Ld. CIT(A) too has

dismissed the assessee's appeal and confirmed the penalty stating that there is no reasonable cause for non-compliance of statutory notice.

4. From a perusal of grounds of appeal it is seen that assessee has mentioned that it has replied to every notice issued by the Assessing Officer and same was submitted to Ld. CIT(A) also through online submissions which is reproduced hereunder for the sake of ready reference:-

*“3) Without prejudice to the above grounds and on the facts and circumstances of the facts and in law, the ld. NFAC CIT(A) ought to have considered that the assessee has replied to every notice issued by the ld. AO and there is not a single instance of missing reply to AO's notices. The details are as under, which were submitted to ld. NFAC CIT (A) with copies online submissions and acknowledgements as below, hence no penalty u/s 271(1)(b) can be imposed on the assessee*

- a. Notice u/s 148 dtd. 22/03/2019*
- b. Show cause notice dtd. 16/10/2019 replied by assessee on 22/10/2019*
- c. Notice u/s 143(2) dtd. 28/11/2019*
- d. Notice u/s 142(1) dtd. 02/12/2019 replied by assessee on 04/12/2019 vide acknowledgement no. 04121912504509 and again on 11-12-2019 vide acknowledgment no. 11121912639174.*
- e. Show cause notice did.12/12/2019 replied on 13/12/2019 vide acknowledgement no. 13121912691716 and again on 20/12/2019 vide*

*acknowledgement no. 20121912826704 and also email was sent on 13/12/2019 to ITO with detailed attachments.”*

4. When assessee has filed return of income on 27.11.2019 in response to notice u/s 148 of the Act and thereafter has complied with all the notices, then, it is not gathered as to why notice u/s 142(1) of the Act was issued on 09.07.2019. It is not the case that assessment order has been passed *ex parte*. A very important fact is that assessee had duly notified the Assessing Officer that the name of company has been struck off from the Register and despite such intimation; he has again sent notices to a non-existent company. Thus, under these circumstances, we do not find any reason for levy of penalty u/s 271(1)(b) of the Act for non-compliance of notice. Accordingly, the penalty is deleted and appeal of assessee is allowed.

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

Order pronounced in the open court on 30.09.2022

Sd/-

**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Sd/-

**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai /Dated 30/09/2022

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**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file. //True Copy//

BY ORDER

(Asstt.Registrar/Sr. Private Secretary)

**ITAT, Mumbai**