

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM, &
SHRI OM PRAKASH KANT, AM**

आयकरअपीलसं./ I.T.A. No. 1656/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2010-11)

Rajkumar Bidawatka C-302, Rock Avenue, Plot no. D, Opp-Joy Ice Cream Near Hindustan Naka, Kandivali(w), Mumbai- 400 067	बनाम/ Vs.	DCIT-14(3)(1), Aayakar Bhavan, M. K. Road, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAIPB4224H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Navneet Lahoti, Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri T. Shankar, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	06.09.2022
घोषणाकीतारीख / Date of Pronouncement	:	06.09.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the assessee against the impugned order dated 07.06.2022, passed by National Faceless Appeal Centre (NFAC), Delhi in relation to penalty proceeding u/s 271(1)(b) for AY 2010-11.

2. Assessee is aggrieved by levy of penalty of Rs. 10,000/- u/271(1)(b) for some alleged non-compliance of notice u/s 148.

3. The facts in brief are that, assessee had filed his return of income for AY 2010-11 on 27.10.10 declaring total income of Rs. 22,80,450/-. Later on, the case was reopened u/s 147 by issuing notice u/s 148 dated 31.03.2017. Ld. AO in the impugned order has mentioned that assessee has not complied with notice u/s 148 and AO has issued reminder letter dated 14.08.17, 15.09.17, 16.10.17 and 10.11.17 which was not complied by the assessee and based on such non-compliance, he has levied the penalty of Rs. 10,000/- u/s 271(1)(b).

4. From perusal of the said letters/reminders, we find that AO has written letter to comply with the notice u/s 148 to file the return of income. The copy of which are appearing on the paper books at page nos. 16-19. However, from the perusal of the assessment order dated 21.12.17, it is seen that the AO clearly mentioned that assessee has complied with the said notice u/s 148 vide letter dated 05.04.17 stating that return filed on 27.07.10 should be treated as return filed in response to notice u/s 148. In

the entire assessment order, there is no whisper of any non-compliance of notice u/s 142(1) or u/s 143(2) and the assessment order has been passed u/s 143(3)/147. From the perusal of penalty order, it seems that AO has levied penalty for not filing return in response to notice u/s 148, but the factum is that letter was filed by the assessee in response to the notice u/s 148 which is evident at page no. 15 of the paper book. Thus, we fail to understand the purpose of 4 reminder letters to file the return of income in response to notice u/s 148 and in any case what was the failure on part of the assessee to comply with the notice u/s 148.

5. Ld. First Appellate Authority has simply dismissed the assessee's appeal ex-parte on the ground that notices were sent through ITBA portal which has not been responded.

6. Before us, Ld. Counsel for the assessee submitted that these letters were issued by the AO on old address despite assessee has informed to the AO about new address. This fact itself shows that there is no failure on the part of the assessee.

7. We have considered the facts of the case. Here penalty has been levied for non compliance of notice u/s 148, which on facts is

not the case. None the less penalty under Section 271(1)(b) is not meant for non-compliance of notice u/s 148. Said section reads as under:-

271(1) -----

(a) -----

*(b) has [***] failed to comply with a notice [under sub-section (2) of section 115WD or under sub-section (2) of section 115WE or] under sub-section (1) of section 142 or sub-section (2) of section 143 [or fails to comply with a direction issued under sub-section (2A) of section 142]*

8. Thus, penalty is levied on failure to comply with the notices u/s 115W(d)(2); or 115W(e)(2); or section 142(1); or section 143(2) or 142(2A), there is no provision to levy penalty for failure of compliance to the notice u/s 148. Thus, the penalty levied by the AO itself legally not sustainable. Even otherwise as noted above, there is no failure on the part of assessee to comply with the notice u/s 148 as assessee has duly filed the return of income in compliance thereof and responded to the notice issued u/s 142(1) and 143(2) and assessment has completed u/s 143(3) r.w.s 147 and

not u/s 144. Thus, penalty levied by the AO is bad in law and on facts. Accordingly, the same deleted.

9. In the result, the appeal filed by the assessee is **allowed**.

Orders pronounced in the open court on 6th September, 2022.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Amit Shukla)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 06.09.2022

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./ Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai