

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT

[CONDUCTED THROUGH VIRTUAL COURT]

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 211/Rjt/2019  
Assessment Year 2010-11**

Bharti Pinakin Bajaj, Hasmatrai Building, Opposite Brahmपुरi Hall, Rajkot PAN: AMRPB415C (Appellant)	Vs	ITO, Ward-2(1)(2), Rajkot (Respondent)
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**Assessee by: Written Submission  
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 20-10-2022  
Date of pronouncement : 31-10-2022

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This assessee's appeal for A.Y. 2010-11, arises from order of the CIT(A)-2, Rajkot dated 02-08-2019, in proceedings under section 271(1)(b) of the Income Tax Act, 1961; in short "the Act".

2. The assessee has taken the following grounds of appeal:-

*“1. The Ld. CIT(A) has erred in law and facts in passing order confirming penalty U/s. 271(l)(b) of Rs. 10,000/-. The same needs cancellation.*

*2. The Ld. CIT(A) has erred in law and facts in passing order confirming penalty U/s. 271(l)(b) of Rs. 10,000/- although no legal service of the notices for which penalty is levied is there. The penalty needs cancellation.*

*3. The Ld. CIT(A) has erred in law and facts in not considering the aspect that the order confirming penalty has been passed without considering statutory position. The penalty order passed is bad in law. The penalty needs cancellation.*

*4. The Ld. CIT(A) has erred in law and facts in not considering the aspect that the order passed confirming penalty is bad in law, illegal and not sustainable in the eye of law. The penalty needs cancellation.*

*5. The Ld. CIT(A) has erred in law and facts in not considering the aspect that the initiation of the penalty proceedings itself was bad in law. The penalty needs cancellation.*

6. *The Ld. CIT(A) has erred in law and facts in not passing separate penalty order for each of the non compliance and also erred in not passing a speaking order for each of the show called non compliance. The penalty needs cancellation*

7. *The Ld. CIT(A) has erred in law and facts in not considering the aspect that there was no legal service of notice was served on the assessee giving reasonable time. The penalty needs cancellation.*

8. *The Ld. CIT(A) has erred in law and facts in not providing adequate and reasonable time. The penalty needs cancellation.*

9. *Without prejudice, the assessee was having reasonable cause on consideration of which no penalty ought to have been levied. The penalty needs cancellation.*

10. *Taking into consideration over all legal, statutory and settled law beside factual aspects of the case no penalty ought to have been levied. The penalty needs cancellation.*

11. *Without prejudice no reasonable opportunity has been provided at the appeal stage. The order needs cancellation.*

12. *The appellant craves leave to reserve his right to amend / alter / add and/or substitute any / all grounds of appeal before the actual hearing takes place.*

*Total Tax Effect*

*Rs. 10,000/-”*

3. The brief facts of the case are that the assessment order under section 144 r.w.s. section 147 of the Act was finalised on 26-12-2017 determining the total income of the assessee at ₹ 26,84,240/-. During the course of assessment proceedings, the AO issued as many as six notices to the assessee, which remained uncompiled with. Accordingly, the AO passed order under section 271(1)(b) of the Act, levying penalty of ₹ 60,000/- for each of the defaults committed by the assessee in not causing appearing before the Ld. AO, during the course of assessment proceedings.

4. In appeal, Ld. CIT(Appeals) restricted the penalty to ₹ 10,000/- , by holding that since the default being the same on all occasions and the assessing officer having option to make the assessment under section 144 of the Act, penalty could be levied only for the first default, as has been held by the Honourable ITAT Delhi in the case of Shri Rekha Rani 60 Taxmann.com 131.

5. The assessee is in appeal before us against the above order passed by Ld. CIT(Appeals) restricting the penalty to ₹ 10,000/- u/s 271(1)(b) of the Act. Before us, the counsel for the assessee filed written submission and submitted that the assessee was not provided inadequate time to cause appearance, the assessee during the said period was stationed at Diu and further the notices issued by the AO did not mention the date of service of notice on the assessee. Accordingly, in the instant set of facts, it is not a fit

case for levy of penalty under section 271(1)(b) of the Act. In response, the Ld. DR relied upon the observations made by Ld. CIT(Appeals) in the appellate order.

6. We have heard the rival contentions and perused the material on record. We observe that in the order passed by Ld. CIT(Appeals), so far as notice under section 148 of the Act is concerned, no penalty is prescribed for non-appearance under section 271(1)(b) of the Act. Further, we also observe that in respect of the said notices issued by the AO, there is no mention in the penalty order of the date on which the notices were served upon the assessee and also the date on which the hearing was fixed. We observe that in the notice dated 03-07-2017, the hearing was fixed for 07-07-2017, thus giving only four days time for the assessee to cause appearance. Again in respect of notice dated 17-11-2017, the hearing was fixed for 22-11-2017, which again gives a very limited time for the assessee to cause appearance. Again, in respect of notice dated 12-12-2017, the hearing was fixed for 15-12-2017, which again displays lack of time and adequate opportunity being provided to the assessee to cause appearance. We also observe that the assessee submitted before Ld. CIT(Appeals) that during the period he had shifted to Diu and therefore there is no mention in the penalty order, whether the notices were served upon the assessee. Therefore, in the instant set of facts, we are of the considered view that adequate opportunity of causing appearance was not granted to the assessee to cause appearance. Further, there is no mention in the order levying penalty under section 271(1)(b) of the Act, whether the notice was served of the assessee, coupled with the fact that only 3 to 4 days' time was given to the assessee to cause appearance.

Therefore, in the instant set of facts, we are of the view that this is not a fit case for levying penalty under section 271(1)(b) of the Act.

7. Accordingly, we direct that penalty levied under section 271(1)(b) of the Act may kindly be dropped, in light of our observations in the instant set of facts.

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

Order pronounced in the open court on 31-10-2022

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 31/10/2022**

**Sd/-**  
**(SIDHHARTHA NAUTIYAL)**  
**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,

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Rajkot