

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR – VIRTUAL COURT

BEFORE SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.245 to 251/NAG/2017
Assessment Years : 2002-03 to 2008-09

M/s. Regency Equifin Pvt. Ltd., Deshpande House, 23, Shantiniketan Society, Ranapratap Nagar, Nagpur- 440022. PAN : AAACR6378P	Vs.	DCIT, Central Circle- 2(3), Nagpur.
Appellant		Respondent

Assessee by : Shri Sanjay C. Thakar
Revenue by : Shri G. J. Ninawe

Date of hearing : 26.10.2022
Date of pronouncement : 01.11.2022

आदेश / ORDER

PER S. S. VISWANETHRA RAVI, JM:

All these appeals by the assessee against the common order dated 02.05.2017 passed by the CIT(A)-3, Nagpur for assessment years 2002-03 to 2008-09.

2. Since the issues raised in all the appeals are similar basing on identical facts, with the consent of both parties, I proceed to hear all the appeals together and pass a consolidated order for the sake of convenience.

3. First, I shall take up ITA No.245/NAG/2017 for the A.Y. 2002-03 filed by the assessee.

4. The assessee raised four grounds of appeal amongst which the only issue emanates for my consideration is whether the CIT(A) is justified in confirming the penalty imposed u/s 271(1)(b) of the Act in the facts and circumstances of the case.

5. I note that the assessee is a company and subjected to search for the abovementioned assessment years. In pursuance of said search, the Assessing Officer initiated proceedings u/s 153C of the Act by issuing notice u/s 142(1) of the Act dated 03.11.2009 along with a questionnaire to the assessee calling for certain details by 06.11.2009. Having no compliance, the Assessing Officer issued notice u/s 271(1)(b) dated 03.12.2009 seeking explanation to show cause as to why a penalty u/s 271(1)(b) of the Act should not be levied for the default in not responding to the notice issued u/s 142(1) of the Act. According to the Assessing Officer, no reply in response to the said show cause notice, the Assessing Officer held the assessee did not comply with the said notices without any reasonable cause and imposed penalty of Rs.10,000/- u/s 271(1)(b) of the Act.

6. A contention was raised before the CIT(A) that no notices u/s 142(1), 143(2) and 271(1)(b) of the Act were served on the assessee at all. In this regard, the CIT(A) sought remand report from the Assessing Officer. The Assessing Officer stated, in the said remand report which is reproduced from page no.7 to 11 of the impugned order, that the notices were issued to Shri Chaitanya Kochar who is associated with the assessee company, also covered in the search and seizure operations. Considering the said remand report, the CIT(A) confirmed the penalty imposed by the Assessing Officer u/s 271(1)(b) of the Act.

7. Before me, the ld. AR Shri Sanjay C. Thakar placed on record order dated 21.09.2022 passed by this tribunal in the case of M/s. Sterlight Fincom Pvt. Ltd. vs. DCIT in ITA Nos.252 to 258/NAG/2017 for A.Ys. 2002-03 to 2008-09 on similar issue and same identical facts argued that this Tribunal considered the issue and deleted the penalty imposed by the Assessing Officer u/s 271(1)(b) of the Act. The ld. AR, Shri S. C. Thakar placed on record The ld. AR submits that no notices were served on the assessee in assessment proceedings as well as penalty proceedings and argued vehemently Shri Chaitanya Kochar who is neither concerned person to receive notices on behalf of the assessee nor

director or a shareholder in the assessee company. He submits that since notices not served on the assessee, the penalty imposed by the Assessing Officer as confirmed by the CIT(A) is not maintainable and drew my attention to the paragraph 3 of ITAT's order dated 21.09.2022.

8. The ld. DR submits that Shri Chaitanya Kochar is the relevant person and drew my attention to the remand report and argued that the Assessing Officer in his remand report discussed the role of the said Shri Chaitanya Kochar in detail and no contrary evidence filed before any of the authorities showing that he is not concerned person. The ld. DR placed heavily reliance on the order of the CIT(A).

9. Admittedly, the assessment in respect of the assessee was completed u/s 144 r.w.s. 153C of the Act which clearly shows that the Assessing Officer completed the said assessment for best of his judgment in the absence of assessee u/s 144 of the Act. On careful reading of the ITAT's order in the case of M/s. Sterlight Fincom Pvt. Ltd. (supra) which held when there is no notice properly served on the assessee, there can be no question of imposing or confirming any penalty u/s 271(1)(b) of the Act and ordered to delete the penalty impose thereof. In the present case also, the main

contention of the ld. AR is that no notices at all served on the assessee and penalty as confirmed by the CIT(A) is liable to set-aside. I find the facts and circumstances arising out of the present appeal are similar and identical to the facts and circumstances in the case of M/s. Sterlight Fincom Pvt. Ltd. (supra) in which the Tribunal considered the similar issue and deleted the penalty imposed u/s 271(1)(b) of the Act for non-service of notices. I find the said finding of this Tribunal is applicable to the facts of the present case on hand and by applying the same I hold that the Respondent-Revenue could not show any evidence establishing that the notices were served on the assessee properly. Thus, a penalty u/s 271(1)(b) of the Act as confirmed by the CIT(A) is set-aside. Thus, grounds of appeal no.1 to 4 raised by the assessee are allowed.

10. In the result, the appeal of the assessee in ITA No.245/NAG/2017 for A.Y. 2002-03 is allowed.

ITA Nos.246 to 251/NAG/2017,
A.Ys. 2003-04 & 2008-09 :

11. Since the facts and issues involved in the above seven appeals are identical, therefore, our decision in ITA No.245/NAG/2017 for A.Y. 2002-03 shall apply *mutatis mutandis* to the remaining six

appeals of the assessee in ITA Nos.246 to 251/NAG/2017 for A.Ys. 2003-04 and 2008-09 respectively. Accordingly, the remaining six appeals of the assessee in ITA Nos.246 to 251/NAG/2017 for A.Ys. 2003-04 and 2008-09 are allowed.

12. To sum up, all the above seven appeals of the assessee are allowed.

Order pronounced on this 01st day of November, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 01st November, 2022.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-3, Nagpur.
4. The CIT (Central), Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर /
DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.