

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

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 01/Rjt/2022
Assessment Year. 2016-17**

Kamleshkumar Vallabhai Chanchadia Prop of Vallabhbhai Punabhai Prop of Vallabhbhai Punabhai, Bazar Road, Sardhar-360004, Gujarat PAN No: AGWPC0633M (Appellant)	Vs	The ITO, Ward- 2(1)(2), Rajkot (Respondent)
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Appellant by : None
Respondent by : Shri B.D. Gupta, Sr. D.R.

Date of hearing : 15-11-2022
Date of pronouncement : 23-11-2022

आदेश/ORDER

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

This appeal is filed by the Assessee against the order dated 10.11.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), as against confirming of penalty levied under section

271(1)(b) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2016-17.

2. The brief facts of the case is that the assessee is an individual. For the Assessment Year 2011-12, regular assessment order u/s. 143(3) of the Act was passed on 17/12/2018 determining the total income at Rs. 13,87,050/- by making addition of unexplained cash credit u/s. 68 of Rs. 11,00,000/-. During the course of assessment proceedings, notice u/s. 142(1) dated 16/05/2018 & 17/09/2018 were served upon the assessee. In response, the assessee failed to reply during the assessment proceedings. Therefore the Assessing Officer initiated penalty proceedings u/s. 271(1)(b) for non-compliance of the above notices and opportunity was given to the assessee vide letter dated 05/03/2019 requesting the assessee to attend the hearing on 14/03/2019 before finalization of penalty proceedings. The assessee neither attended nor filed any written submission. Therefore the Assessing Officer concluded that the assessee has nothing to say in the matter and levied penalty of Rs. 20,000/- u/s. 271(1)(b) of the Act.

3. Aggrieved against this order, the assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeals). Subsequently, the appeal was migrated to National Faceless Appeal Centre (NFAC). Before NFAC none appeared on behalf of the assessee in spite of several opportunities, therefore the appeal filed by the assessee was dismissed as follows:

First notice u/s 250 was issued to the appellant on 22/12/2020 for hearing on 06/01/2021, however, on the appointed date; neither appellant attended nor filed any submission. Several opportunities of hearing were given to the appellant as narrated below:-

Sr. No.	Date of Notice issued	Date of Hearing	Particulars
1	17/03/2021	26/03/2021	Notice u/s. 250 issued.
2	NA	26/03/2021	No one attended
4	25/03/2021	09/04/2021	Notice u/s. 250 issued.
5	NA	09/04/2021	No one attended
6	20/09/2021	29/09/2021	Notice u/s. 250 issued.
7	NA	29/09/2021	No one attended

As can be seen from the above, the appellant and his AR were given opportunities by way of notices issued as narrated above. However, the appellant / AR have refrained from attending the appellate proceedings.

5.1 There is a well-known dictum of law "VIGILANTIBUS, NO DORMENTIBUS, JURA SUBVENIUNT" which means law will help only those who are vigilant. Law will not assist those who are careless of his/her right. In order to claim one's right, s/he must be watchful of his/her right. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefits of law. Law confers rights on persons who are vigilant of their rights.

Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223 ITR 480) has held as under:

" if the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference."

Similarly, Hon'ble Punjab & Haryana High Court in the case of New Diwan Oil Mills vs. CIT (2008) 296 ITR 495) returned the reference unanswered, since the assessee remained absent and there was no assistance from the assessee.

Hon'ble Supreme Court in the case of CIT vs. B. Bhattachargee & Another (118 ITR 461 at page 477-478) held that the appeal does not mean, mere filing of the memo of appeal but effectively pursuing the same.

In the given circumstances there is no other option but to decide the appeal on the basis of documents that have been submitted by the assessee as part of the appeal memo, i.e. grounds of appeal, statement of facts and penalty order.

5.2. Decision: I have gone through the form no. 35, order levying penalty and other material on record. Since all the grounds concern to the levy of penalty u/s. 271(1)(b) of the Act, these are taken together. The appellant has challenged the levy of penalty by stating that there was reasonable cause and that he cooperated in the assessment proceedings.

5.3 The AO has levied penalty u/s 271(1)(b) of the Act for the failure of the appellant to comply with two statutory notices issued during the assessment proceedings. The section. 271(1)(b) of the Act provides for levy of penalty of ,1s. 10,000/- for each of the failure to comply with certain notices including notices u/s 142(1) and 143(2) of the Act. The assessee can be saved from such penalty if it is proved that there was a reasonable cause for such failure to comply with notices. In this case the appellant has neither submitted any argument/information/evidences for non-levy of penalty during penal proceedings nor during appellate proceedings in spite of several opportunities. The ground has a mention that there was reasonable cause, but the appellant has not provided any information or evidence regarding the same. Therefore, there is no other option but to assume that there was no reasonable cause for the two failures committed by the appellant. Therefore, the penalty of Rs. 20,000/- levied by the AO is hereby confirmed. The ground no 1 to 5 are dismissed.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1] The Ld. A.O erred in law and on facts in levying penalty u/s. 271(1)(b) of Rs.20000/- and the Ld.CIT[A] erred in law and on facts in upholding the said penalty.

2] On the facts and circumstances of the case it is contended that the penalty levied deserves to be deleted.

3] As there was reasonable cause for non-submission of the details the penalty levied may kindly be ordered to be deleted.

4] Your appellant craves leave to add, alter, amend or withdraw any of the grounds stated here above.

4.1. None appeared on behalf of the assessee. When the case was listed for hearing on 10/10/2022, the assessee vide his letter dated Nil stated certain details have to be collected and prepared and therefore sought for adjournment for one month period. Thus the case was adjourned to 15/11/2022, today. No representation on behalf of the assessee or by any Authorized Representative. It is seen from the Ld. CIT(A)'s order that the assessee has not responded before the Ld. CIT(A) and also not brought out reasonable cause for not responding to the notices issued by the Assessing Officer. Further it is seen from the Penalty order, the

assessee has not responded to the specific show cause notice before levying penalty u/s. 271(1)(b) of the Act. Even before us, the assessee is not appeared today and no details are filed before us.

5. In the absence of same, we have no hesitation in confirming the penalty levied u/s. 271(1)(b) of the Act. The assessee has not made out any good ground and therefore the same is rejected.

6. In the result, the appeal filed by the Assessee is dismissed.

Order pronounced in the open court on 23-11-2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

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

Ahmedabad : Dated 23/11/2022 *TRUE COPY*

आदेश की प्रतिलिपि अद्येषित / 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