

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 2393/MUM/2022  
Assessment Year: 2012-13**

Nilofar Jalal Lakhan,  
Crescent Bay, Tower 6, Flat No.  
3904, Jerbai Wadia Road,  
Bhoiwada, Parel,  
Mumbai-400012.

**PAN No. AFVPJ 9774 L  
Appellant**

National Faceless Assessment  
Centre DCIT 2(1), Delhi.

**Vs.**

**Respondent**

Assessee by : Mr. V.C. Shah, AR  
Revenue by : Mr. Chetan M. Kacha, DR

Date of Hearing : 21/11/2022  
Date of pronouncement : 25/11/2022

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal has been preferred by the assessee against order dated 30.08.2022 passed by the National Faceless Appeal Centre (NFAC), Delhi (hereinafter shall be referred as 'Ld. First Appellate Authority'), in relation to penalty levied u/s 271(1)(b) of the Income-tax Act, 1961 (in short 'the Act') for non-compliance of the notice



issued during the course of assessment proceedings for assessment year 2012-13.

2. We have heard rival submissions of the parties on the issue-in-dispute and perused the relevant material on record. According to the Assessing Officer, the assessee has not complied to notice u/s 142(1) of the Act issued on 05.10.2009 and therefore, assessee was held to be liable for levy of penalty of ₹10,000/- u/s 271(1)(b) of the Act for non-compliance of the notice. According to the assessee due to change of address, the assessee could not comply even the notice u/s 148 of the Act issued for reopening of the assessment as well as subsequent notices issued during the reassessment and due to which the Assessing Officer has passed the reassessment order u/s 147 r.w.s. 144 of the Act and against which the assessee is in appeal before the Ld. First Appellate Authority. The assessee contended that she is a salaried person and tax was deducted by the employer on the salary and therefore no return of income was filed by her in the regular course of income and due to change in her residential address, the notices issued could not be served upon



her. The assessment u/s 147 r.w.s. 144 was completed on address i.e. 29, 1<sup>st</sup> Floor, Sonawala Bldg., Bank Street, Fort, Mumbai-400023. However, penalty u/s 271(1)(b) i.e. impugned order has been served upon address 204, 3H Kalpataru Aura, Opp. R City Mall, L.B.S. Road, Ghatkopar West, Mumbai-400086. The Ld. CIT(A), however, as confirmed levy of penalty on the ground that assessee did not furnish any reasonable cause for non-compliance of the notices. Before us, the Ld. Counsel of the assessee submitted that the Ld. First Appellate Authority has not considered submission of the assessee before confirming the penalty levied by the Assessing Officer.

2.1 We find that the Assessing Officer has not mentioned any mode of the service of the notice dated 05.10.2019 u/s 142(1) of the Act before levy of the penalty. It is the responsibility of the Assessing Officer to confirm whether the notice was sent by notice server or through post or through e-mail and ensure whether same was served upon the assessee. No such fact has been brought on record by the Ld. Assessing Officer. Further, we find that assessee



has raised the change of address as one of the reasonable cause for non-compliance of notice u/s 142(1) of the Act. In this reference, the Ld. Counsel of the assessee has relied on the decision of the Coordinate Bench of the Tribunal in the case of **Balram Kumar Mahendra v. ITO 21 taxmann.com 222 (Delhi)**, wherein the Tribunal held as under:

*“9. We have heard both counsel and perused the records. We find that penalty in this case has been levied under section 271(1)(b) of the Income-tax Act. This section mandates levy of penalty for, inter alia, not complying with the notice issued under section 142(1) or 142(3). Section 273B of the Income-tax Act provides that, inter alia, penalty under section 271(1)(b) need not be imposed, if it is proved that there was a reasonable cause for the said failure of the assessee to comply with the provisions of section 271(1)(b). In this case we find that non-appearance of the assessee before the Assessing Officer was caused by non-receipt of the notice. This in our considered opinion can be construed as reasonable cause under section 273B for non-compliance by the assesseees.*

*10. Under such circumstances, rigours of penalty under section 271(1)(b) are not attracted in the case of the assessee. In this regard, we place reliance from the apex court decision rendered by a larger Bench comprising of*



*three of their Lordships in the case of Hindustan Steel Ltd. v. State of Orissa [1972] 83 IT 26 (SC) wherein it was held that (headnote) "an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act, or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."*

2.2 We find that in the instant case before us also ex-parte assessment has been completed against the assessee due to non-compliance of the notices and in which the assessee has substantiated change of the address as the main reason. Therefore, respectfully following the finding of the Tribunal (supra), we direct



the Assessing Officer to delete the penalty levied u/s 271(1)(b) of the Act on the ground of being the reasonable cause for non-compliance of the notice u/s 142(1) of the Act. The grounds of the appeal of the assessee are accordingly allowed.

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

**Order pronounced under Rule 34(4) of the ITAT Rules,  
1963 on 25/11/2022.**

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 25/11/2022  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,  
(Sr. Private Secretary)  
**ITAT, Mumbai**