

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT

[ CONDUCTED THROUGH VIRTUAL COURT ]

**Before: Ms. Annapurna Gupta, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 101 /Rjt/2021  
Assessment Year 2017-18**

M/s. Hindustan Trading Corporation, Rajkot PAN: AABFH2039R (Appellant)	Vs	The ITO, Ward-2(1)(2), Rajkot (Respondent)
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**Assessee by: Shri Kalpesh Doshi, A.R.  
Revenue by: Shri K.L. Solanki, Sr. D.R.**

Date of hearing : 30-11-2022  
Date of pronouncement : 23-12-2022

**आदेश/ORDER**

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

This assessee's appeal for A.Y. 2017-18, arises from order of National Faceless Appeal Centre (NFAC), Delhi dated 01-07-2021, in proceedings under section 272A of the Income Tax Act, 1961; in short "the Act".

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

“1. That the ld. CIT(A) has wrongly passed the order u/s. 250 without considering the adjournment pleaded and not allowing proper opportunity to be heard.

2. That the ld. CIT(A) has wrongly imposed penalty u/s. 272A(1)(d) of the I.T. Act, 1961 amounting to Rs. 10,000/-

3. That, the findings of the ld. CIT(A) are not justified and are bad-in-law.

4. That, the appellant craves to add, amend, alter or delete any of the above grounds of appeals

Total Tax Effect:

Rs. 10,000/-

3. The brief facts of the case are that the assessee was a partnership firm engaged in the distribution of FMCG products since 1973. The partnership firm was dissolved on 31-03-2009 and the same was duly submitted to the Assessing Officer by way of letter dated 30-01-2018. After the dissolution the partnership firm, it was converted into proprietorship firm by one of the partners Shri Dinesh Doshi who has been carrying on the business since then. During the impugned assessment year, the AO initiated penalty proceedings under section 272A(1)(d) of the Act on account of non-compliance in respect of notice of hearing issued during the course of assessment proceedings. In the penalty proceedings under section 272A(1)(d) of the Act, the assessee submitted before the AO that the partnership firm has dissolved and the account has been duly operated and shown in the books of accounts of the proprietary concern of Shri Dinesh Joshi, M/s Hindustan Trading Corporation. It was submitted before the AO that the proprietor of Hindustan Trading Corporation, Shri Dinesh Doshi was issued notice with respect to cash transactions during assessment proceedings and a reply in response to the aforesaid notice has been

furnished by the assessee, through online income tax portal and in the said reply it was submitted that the cash deposits are out of receipts from cash sales. With regard to failure to comply with notice issued during the course of assessment proceedings, the assessee submitted that the proprietor Shri Dinesh Doshi has been regularly carrying out its business activity at Dinesh Chambers at Canal Road since a long time and none of the notices has been received by the assessee at the business place and nor any “affixture” has been marked for service of notice. Further, the assessment order has been received at the very same address where the notices have been said to be sent. Accordingly, the assessee submitted that since in the instant facts, he has been operating from the same premises and the assessment order was also received on the very same premises, there was no deliberate non-compliance on behalf of the assessee in the instant facts. However, the AO dismissed the assessee’s submission and imposed penalty under section 272A(1)(d) of the Act amounting to ₹ 10,000/-.

4. In appeal before CIT, he dismissed assessee’s appeal with the following observations:

**“6. Decision on Grounds of Appeal No.(i)**

*The appellant has not complied with the statutory notices issued by Income Tax Department. The levy of penalty u/s 272A(1)(d) is hereby confirmed.*

*The grounds of appeal is dismissed.”*

5. Before us, the counsel for the assessee submitted that no notice of hearing was served on the assessee at any point in time. It was submitted

before the AO that the assessee has been carrying out business from the same premises for a long time and even the assessment order was served upon the assessee at the very same premises, but there is nothing on record to show that any notice of hearing was ever served upon the assessee. The assessee submitted that it has been verified subsequently from the records of the officer that the said notice has not been served and kept in the file of the AO. The assessee further submitted that the AO has further mentioned in the assessment order the notice has been served with “affixture” process at the given address, however, no such process has been carried out and it is found from record that the report of the Inspector in the file specifically states that no “affixture” has been made. He further submitted that in the hearing before Ld. CIT(Appeals), assessee filed application for adjournment on medical grounds since he was suffering from Covid-19. However, such application for adjournment was not considered by the Ld. CIT(Appeals) while passing the order and the status of the application filed on-line is still showing “open”. Accordingly, in the instant facts, the counsel for the assessee submitted that it is a fit case where penalty in the instant set of facts imposed under section 272A(1)(d) of the Act for non-appearance, may be deleted. In response, the DR relied upon the observations made by the Ld. CIT(Appeals) and AO in their respective orders.

6. We have heard the rival contentions and perused the material on record. In our considered view, in the instant set of facts, we are of the view that it is a fit case for deleting levy of penalty under section 272A(1)(d) of the Act. A perusal of the Ld. CIT(Appeals) order shows that he has simply reproduced the order passed by the AO and summarily dismissed the

assessee's appeal without considering the grounds of appeal filed by the assessee and nor discussing why in the instant set of facts, penalty should be confirmed. Further, in the faceless appellate proceedings, the adjournment application filed by the assessee has also not been disposed of. Accordingly, in the interests of justice, keeping in light the instant facts, we are hereby deleting the penalty of Rs. 10,000/- imposed by the AO under section 272A(1)(d) of the Act.

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

Order pronounced in the open court on 23-12-2022

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 23/12/2022**

**Sd/-**  
**(SIDHHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रहित / 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