

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “G” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.1367/Del/2022
[Assessment Year : 2011-12]**

Simple Singh, Kartar Singh & Co., 86, Bank Street, Meerut Cantt., Meerut, Uttar RPadesh-250001. PAN-AWMP57877F	vs	ITO, Ward-1(2)(5), Meerut.
APPELLANT		RESPONDENT
Appellant by	Shri R.P.Narang, Adv.	
Respondent by	Shri Abhishek Kumar, Sr.DR	
Date of Hearing	21.12.2022	
Date of Pronouncement	05.01.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2011-12 is directed against the order of Ld. CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi dated 29.04.2022.

2. The assessee has raised following grounds of appeal:-

1. *“That the Ld. CIT(A), NFAC, New Delhi is erred in law and otherwise ignoring the facts the notice on the basis of which the penalty was imposed was never been served either an appellant or on her authorized agent. The ld. CIT(A) only relied upon on letter received from the AO in respect of notice issued but never bothered whether the same has been served or gone astray is most arbitrary and uncalled for in/ any case is highly excessive.*
2. *That the ld. CIT(A), NFAC, New Delhi was not justified while confirming the penalty imposed by Assessing Officer without affording*

an opportunity to rebut the claim of non-service of notice is against the principal of law and natural justice.

3. *The appellant/ assessee craves leave to take additional grounds of appeal before or at the time of hearing of the appeal and/or modify any of the above grounds.”*

3. Facts giving rise to the present appeal are that in this case, assessment was re-opened u/s 144/147 of the Income Tax Act, 1961 [“the Act”] and was concluded on 20.12.2018. During the course of assessment proceedings, the Assessing Officer [“AO”] issued statutory notices u/s 142(1) of the Act and also issued show cause notice u/s 271(1)(b) of the Act, against the non-compliance of the statutory notices. Thereafter, the AO levied penalty u/s 271(1)(b) of the Act amounting to Rs.10,000/- to the assessee.

4. Aggrieved against this, the assessee is in appeal before Ld.CIT(A), who also sustained the penalty.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. At the outset, Ld. Counsel for the assessee argued that non-compliance by the assessee was due to non-service of the notice since the notice was sent to an incorrect address. He contended that this fact was duly brought to the notice of Ld.CIT(A). He further reiterated the submissions as made in the written submissions. For the sake of clarity, the relevant contents of the written submissions are reproduced as under:-

“Hon’ble Sir.

The present appeal arise against the order passed by the CIT(Appeals), NFAC, Delhi filed by appellant/assessee against the order of Assessing Officer dated instituted on 13.02.2020 dismissing the appeal the order so passed by the Id. CIT(A), bears following drawbacks/shortcomings, the para-wise explanation are for adjudication before the Hon’ble Bench.

As per CIT(A), his observation thereby not accepting our claim

Para No. 7 of C1T(A) order Decision:

In the given facts, it is evident that notices u/s 142(1) were sent at the correct address & duly served. AO has made all attempts to issue notice at all known addresses. The assessment order itself mentions the efforts made by the AO. There is no doubt that there is only one Simple Singh residing at 3/203, Shraddhapuri, but she choose to remain silent during the proceedings and want to take all technical pleas in appeal without fulfilling her legal duties. Appellant choose not to comply with these legal notices without any reasonable cause/valid reasons. Thus, Ground of appeal 1 to 3 on service of notice & legality of proceedings are dismissed.

Objection /explanation argued by us in appeal proceeding

(i) The Id. CIT(A) passed the order and rejecting the reiterated request by the appellant without appreciating our claim the notices as mentioned by the Id. AO were never served upon the assessee/appellant at all, as much as while inspecting the file of Id. Assessing Officer by the authorized representative Mr. R. K. Sharma Advocate, the Ld. AO could not provide the valid Ack. receipt, the Id. CIT(A) did never mentioned anything in this regards in impugned order.

(ii) The Id. CIT(A) did not mention in his order inspite of our request /prayer: - had the AO would have made some efforts to locate the assessee/appellant this would not been the story.

(iii) The Id. CIT(A) did never appreciate the facts the basic notice u/s 148 was issued in the name of Shri Simple Singh S/o Maninder Pal Singh in place of actual name Smt. Simple Singh D/o Rajpal Singh duly appearing in

income tax portal as also on the copy of sale deed which has been made the main tool to proceed u/s 147. It is expected from the department the basic notice ought to have been issued in the right name and right address.

Para 8 of CIT(A) Order

Kindly refer to page no. 23 of our appeal originally filed i.e. Order of CIT(A) filed with appeal the last para reproduced as below:

In the given facts and circumstances, I consider that the appellant has failed to explain the source of cash investment in the property. Hence, the AO was justified to make the addition u/s 69 of I.T. Act. Therefore, Ground of appeal 4 to 7 are dismissed.

(The complete para can be viewed from the order of CIT (A) placed on record)

- i. *The appellant/assessee is a regular assessee for last more than ten years, the return income of appellant/assessee always accepted in past. The return filed by her consist of copy of balance sheet that includes details of assets movable or immovable held by her at the close of accounts, the relevant page of ITR duly uploaded on govt, portal for the year under reference is placed on record. Since the return was filed showing profit above 8% we were not obliged to get our account audited the stand of CIT(A) is not a good ground to reject our claim.*
- ii. *On point of investment hon'ble's attention drawn on para 3 of our written submission dated 12.04.2022 now placed at page no. 33 of appeal filed, copy of balance sheet forming part of ITR-4 also enclosed with this submission the Id. CIT(A) did not bother to appreciate and rejected the claim stating the balance sheet is not audited though the same was not at all required.*
- iii. *Attention again invited on our written submission as counter comments to assessing officer dated 04.06.2022, the Id. CIT(A) was particularly prayed to direct us to ask any further information from us and allow us to give a virtual meeting to apprise our claim which was totally ignored by him is bad in law and arbitrary.*

In addition to above several other findings and conclusions of CIT(A) made in his impugned order under appeal would be discussed during the hearing of the appeal before the Hon'ble Bench."

7. On the contrary, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has decided the issue by observing as under:-

3.2 *"The appellant vide his submission dated 12/04/2022 submitted that she is filing his return of income regularly more than 02 decades and regular income tax payer. She mentioned her address as 3/203, Sharadha Puri, Meerut-250001, Utter Pradesh, India.*

3.3 *For examination of the appellant's submission and facts of the case, a letter was issued to concern A.O. with copy of submission of the appellant, and asking therein details of noticed issued.*

In response the above letter, the A.O. concern submitted his reply, which is re-produced as under:-

"On perusal of assessment record, it is observed that notice u/s 133(6) and notice 148 was issued on 02/0/2018 and 28/03/2018 respectively and served upon the assessee through speed post on the assessee's address i.e. 3/203, Shradhapuri, Meerut. The scanned copies of these notices are attached herewith for your kind perusal and necessary action. Also, other notices issued u/s 142(1) on various dates 'were sent through speed post on the same address. Scanned copy of these notices are also attached herewith. Order passed u/s 271(1)(b) and u/s 144of the I.T. Act. were passed on PAN address i.e. S-3, Ekta Apartment, Dorli, Near Pal, Meerut of the assessee. It is also observed that no notice issued by the

department was received un-served. Thus, submission of the assessee that she has not received any of the notices issued by the department due to wrong address mentioned on these notices is not correct”.

3.4 *The submission filed by the appellant and reply received from concerned A.O. was carefully perused and it is noted that the appellant has filed her income of return for A.Y. 2011-12 mentioning address as “3/203, Shradha Puri, Meerut-250001, Utter Pradesh, India”.*

Further, appellant herself claims that she has been residing at the same address for two decades. The PAN data details reveals address as S-3, Akta Apartment, Dorli, Near Pal, Meerut. The appellant has never bothered to get the address changed in PAN database, which was her duty.

It is further observed from the copy of 142(1) notice dated 17/10/2018 (copy sent by the A.O.) that the address is same “3/203, Sharadha Puri, Meerut - 250001, Utter Pradesh, India,” which the appellant claims to be her residence for two decades. This notice was duly served by speed post upon assessee. As submitted by A.O., no notice returned back unserved.

In the given facts and circumstances, it is evident that notices u/s 142(1) were sent at the correct address & duly served. However, appellant choose not to comply with these legal notices without any reasonable cause/valid reasons. Thus, the penalty u/s 271(1)(b) of I.T. Act., 1961 is held to be correctly levied. The appeal of the appellant is dismissed.”

9. It is not disputed by the Revenue that the notice was sent on the address given in the income tax return filed by the assessee. Therefore, it cannot be inferred that the assessee had not provided the correct address to the Assessing Authority. Looking to the totality of the facts and circumstances of the case, we

are of the considered view that the assessing authority ought to have served notice at the correct address as mentioned in income tax return. The statutory notice should not be issued in a casual and mechanical manner. The Assessing Authority should verify the records placed before it and ensure the statutory notice is served on the current address of the assessee. Looking to the facts of the present case in our considered view, the AO was not justified in levying of the impugned penalty. We therefore, direct the AO to delete the penalty amounting to Rs.10,000/- levied u/s 271(1)(b) of the Act. Thus, grounds raised by the assessee are allowed.

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

Order pronounced in the open Court on 05th January, 2023.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, NEW DELHI