

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. 108/Rjt/2021  
Assessment Year: 2011-12**

Vinayaka Realty (G) Private Limited C/O Himanshu Khajuriya, A.V. Nagar Boarding Building Opp. Virani High School, Tagor RD Rajkot-360002  PAN No: AACCV1542M  (Appellant)	Vs	The ITO, Ward- 1(2)(5), Rajkot  (Respondent)
--	----	---

**Assessee Represented: None**  
**Revenue Represented: Shri B.D. Gupta, Sr.D.R.**

Date of hearing : 09-01-2023  
Date of pronouncement : 11-01-2023

**आदेश/ORDER**

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

This appeal is filed by the Assessee against the Appellate order dated 29.07.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), confirming the levy of penalty under section

271(1)(b) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2011-12.

2. The brief facts of the case is that the assessee is a Company engaged in the business of Civil Contractor. As per information with the Department, the assessee made cash transaction of Rs. 26,50,000/- in its Bank of India account and also received payment of Rs. 1,53,775/- from contract/professional/technical fees during the financial year 2010-11. However the assessee has not filed its Return of Income for the Assessment Year 2011-12. The Assessing Officer believed that the income of Rs. 28,03,775/- chargeable to tax has escaped assessment and issued a notice u/s 148 on 27/03/2018.

2.1. Thereafter a notice u/s. 142(1) was issued on 02/07/2018 and 28/08/2018 fixing the case for hearing on 16/07/2018 and 12/09/2018 respectively. The assessee has not responded to both the notices. Subsequently, another notice u/s. 142(1) was issued to the assessee on 15/10/2018. Thereafter the assessee filed Nil Return on 19/11/2018. Pursuant to the same, assessment was completed assessing Nil income and also initiated penalty proceedings u/s. 271(1)(b) for non-compliance of hearing notices.

2.2. A further show cause notice was issued to the assessee on 07/03/2019 fixing the case for hearing on 15.03.2019 why not the penalty u/s. 271(1)(b) should not be levied and called for explanation from the assessee. In response, the assessee submitted

reply dated: Nil received by the A.O. on 18/03/2019. The submission of the assessee was being considered carefully but found not tenable as the assessee has not submitted any explanation regarding non-compliance of the notices issued u/s. 142(1) of the Act, neither by filing reply nor seeking time to file Reply. Therefore the Assessing Officer levied a penalty of Rs. 10,000/- u/s 271(1)(b) of the Act.

3. Aggrieved against this penalty order, the assessee filed an appeal before the National Faceless Appeal Centre. The Appeal was listed for hearing on 14/01/2021, 25/06/2021 and 26/07/2021 but the assessee has not responded to the hearing notices nor filed any written submission. It is, therefore the Ld. NFAC dismissed the appeal as follows:

*4.2 It can be seen from the above details that the appellant has not filed any details or written submissions. The appellant did not made any reply to support the appeal filed by him, though the above notices were duly served on the appellant.*

*4.3 It is held in various decisions that not only the appeal could be filed by the appellant it should also be pursued effectively for its prosecution. In this regard reliance is also placed on the following decisions-*

*i. Multiplan Indian P Ltd., 38 ITD 320, ITAT Delhi, wherein it was observed :*

*4. A judicial body has certain inherent powers. Decisions are taken for the purpose of proper and expeditious disposal of the appeals in present climate of mounting arrears partly due to appeals being filed without proper application of mind to facts and law and also at times for altogether extraneous considerations.*

*Again, there may be, various reasons with the appellant to remain absent at the time of hearing. One of the reasons may also be a desire or absence of need to prosecute the appeal or inability to assist the Tribunal in a*

*proper manner or to take benefit of vagaries of law. The exact reasons are only known to the appellant.*

*ii. Estate of Late Tukojirao Holkar, 223 ITR 480, (MP) wherein the Hon'ble High Court dismissed the reference with following observation*

*As held in Jamunadas v. CST [1993] 38 MPLJ 462 (MP) and the common order passed in Miscellaneous Civil Case No. 303 of 1986—B.R. Phosphate v. CS7 and Miscellaneous Civil Case No. 304 of 1986—B.R Phosphate v. GS7 by this court on November 6, 1995, this court is not bound to answer the reference. In Jamunadas v. CST [1993] 38 MPLJ 462, it is held as under:*

*"For the foregoing reasons, we are of the opinion that 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, this court is not bound to answer the reference. We refuse to answer the reference and also saddle the assessee with the costs of the Department quantified at Rs. 150."*

*4.4 Since the appellant has failed to represent its case despite several opportunities provided as above and no details have been filed, I do not find any reason to interfere with the order of the AO.*

*5. In the sum, the appeal of the appellant is 'dismissed'.*

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

*1. The Ld. Income Tax Officer Ward-1(2)(5), Rajkot erred in law and on facts in levying the penalty of Rs.10,000 u/s.271(l)(b) and the learned CIT (appeal) erred in retaining the same. On the facts and circumstances of the case it is contended that the penalty levied deserves to be deleted.*

*2. As there was a reasonable cause for the alleged delay penalty levied deserves to be deleted.*

*3. In respect of notice of hearing issued by learned CIT(A) fixing the hearing on 14/01/2021 the assessee had applied for adjournment. In respect of the notice of hearing the appeal issued by the learned CIT (appeal) fixing the hearing of the appeal on 25/06/2021 the same could not be complied as the /working director of the company Shri Himanshubhai Kajuriya was out of Gujarat. However in respect of the notice of hearing issued by learned CIT (Appeal) fixing the hearing of the appeal on 26/07/2021 the assessee had e-filed a detailed submission through internet. The copy of which is enclosed here with. However the same has not been consider and the appeal of the assessee has been*

*dismissed, resulting in filing of the present second appeal before the Honorable Bench.*

*4. The subsequent compliance during assessment proceedings means that the earlier defaults are deemed to have been condoned by the Ld.AO.*

*5. The submission filed before Ld.CIT(A) is relied upon in the second appeal before Hon'ble ITAT Bench.*

*6. On the facts and the circumstances of the case it is contended that no penalty deserves to be levied.*

4.1. None appeared on behalf of the assessee. On the first hearing date namely on 19.05.2022, the assessee sought for an adjournment seeking certain details have to be prepared. Thus the case was adjourned to 19/10/2022. On 19/10/2022 none appeared on behalf of the assessee and the case is adjourned to 08/12/2022. On 08/12/2022, the assessee sent e-mail seeking an adjournment for one month on the ground that he need to get advice from Senior Counsel. Thus the case is adjourned to 09/01/2023, however none appeared on behalf of the assessee and no authorization given to Advocate or Chartered Accountant and no Paper Books is filed before us. Thus it clearly shows that the assessee is not interested in pursuing the appeal both before this Appellate Forum as well as before the Lower Authorities. We find from the Ld. CIT(A)'s order that the assessee has not justified for non-compliance to the 142(1) notices issued by the Assessing Officer. We further find from ground no. 3 copy of the adjournment letters said to be enclosed with the appeal papers, but we do not find any such adjournment letters filed before us. Further the assessee has not justified why he has not complied to the notices

issued u/s. 142(1) by the Assessing Officer. Thus, we do not find any merits in the grounds raised by the assessee.

5. In the result, the appeal filed by the Assessee is hereby dismissed.

Order pronounced in the open court on 11 -01-2023

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 11/01/2023**

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

**आदेश की प्रतिलिपि अग्रेषित / 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