

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

(Conducted through Virtual Court)

**ITA No.207/Ind/2022
Assessment Year: 2012-13**

Shahid Hassan Ansari,
H.No.110, Gram-Badwai,
Tehsil - Huzur,
Bhopal – 462 038.
[PAN – AJFPA 7418 L]
(Appellant)

vs. Income Tax Officer (3)(2),
Bhopal.

(Respondent)

Appellant by : None
Respondent by : Shri Ashish Porwal, Sr. DR

Date of hearing : 05.01.2023
Date of pronouncement : 23.01.2023

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against the order dated 20.06.2022 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2012-13.

2. The grounds of appeal are as under:-

- “1. *Most respectfully, Grounds of Appeals are narrated as under:-*
1. *That in the facts and circumstances of the case the appellant during the relevant appellate proceedings related to penalty order mistakenly took the said proceedings as ongoing appellate proceedings related to assessment order passed under section 144 r.w.s. 147 by the Learned Assessing Officer. The appellant was acting in good faith and mistook the hearing notice of appellate proceedings as a part of already ongoing appellate proceedings against the assessment order dated 30.11.2019 and submitted documents related to appellate proceedings initiated on 07.02.2021 in support of his claim against the additions made in the assessment order.*

2. *That in the facts and circumstances of the case the Learned CIT Appeals completely ignored the submission though related to appeal against the assessment order passed by Learned Assessing Officer but the said submission also contained documentary evidences of appellant's claim for not attending the assessment proceedings. The Learned CIT Appeals willfully ignored the said submission which is against the principles of natural justice.*
3. *That in the facts and circumstances of the case the Learned CIT Appeals did not bother to give the assessee a proper opportunity after receiving the appeal submission other appellate proceedings with different grounds and upheld the penalty order which is unjust and unwarranted.*
4. *That in the facts and circumstances of the case the appellant never intended to avoid the assessment proceedings initiated by the department the sole reason of him not attending the proceedings was non receipt of notices issued by the department. The appellant did not respond to the notice issued under section 142 of the Income Tax Act, 1961 as he was unaware about the of initiation of assessment proceedings and thus initiation of penalty proceedings under section 271(1)(b) is bad in law and should be annulled.*
5. *That in the facts and circumstances of the case the appellant has not failed to respond to the show cause notices issued under section 271(1)(b) and only due to glitches in the e filing portal he could not receive/download/ respond to any further notices issued by the department. The appellant did not receive any final opportunity to substantiate his claim and thus the penalty order has been passed without giving sufficient opportunity of being heard to appellant.”*

3. The assessee did not file return of income for the A.Y. 2012-13. Subsequently notice under Section 148 of the Income Tax Act, 1961 was issued on 29.03.2019. The assessment was completed on 30.11.2019 under Section 144/147 of the Act at income of Rs.13,98,000/- thereby making addition of Rs.13,98,000/- as unexplained cash deposit under Section 69 of the Act. The assessee failed to make compliance of the notice under Section 142(1) dated 16.08.2019 and, therefore, penalty proceedings under Section 271(1)(b) of the Act were initiated on 30.11.2019. The assessee failed to comply with the notices but filed the reply which was considered by the Assessing Officer and imposed penalty under Section 271(1)(b) of the Act for failure to comply with notice under Section 142(1) of the Act.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. At the time of hearing none appeared on behalf of the assessee despite giving notices. The notice was duly served to the assessee. Hence, we are proceeding on the basis of the submissions made by the assessee before the Assessing Officer as well as before the CIT(A).

6. The Ld. DR relied upon the Assessment Order, Penalty Order and the order of the CIT(A).

7. We have heard the Ld. DR and perused all the relevant material available on record. The assessee in the grounds of appeal before the CIT(A) mentioned that the assessee did not receive any notice under section 142 of the Act and was unaware about the initiation of assessment proceedings as due to the glitches in the Income Tax Portal, he could not download any notice issued by the Department. These aspects were not taken into consideration by the CIT(A) and the CIT(A) has decided the appeal without giving opportunity of hearing to the assessee. Therefore, it will be appropriate to remand back the issue to the file of the CIT(A) for proper adjudication of the issue contested therein on merit. Needless to say the assessee be given opportunity of hearing by following the principles of natural justice. Appeal of the assessee is, therefore, partly allowed for statistical purposes.

8. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced as per Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963 on this 23rd day of January, 2023.

Sd/-
(BHAGIRATH MAL BIYANI)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Indore, the 23rd January, 2023

PBN/*

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*