

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G' NEW DLEHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 1637/Del/2020  
Assessment Year : 2011-12**

Suraj Bhan, H.No. 396, Vill. Majara(Bohar) PO-Asthal Bohar, Rohtak <b>PAN: BLVPB6735L</b> (Appellant)	VersuS	Income-tax Officer, Ward-4, Rohtak.  (Respondent)
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Assessee by : Sh. U.S. Aggarwal, Ld. Adv.  
Revenue by : Sh. B.M. Singh, Ld. Sr. DR

Date of hearing: 30.01.2023  
Date of order : 31.01.2023

**ORDER**

**PER N.K. CHOUDHRY, J.M.**

This appeal has been preferred by the Assessee against the order dated 24.07.2020, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-Rohtak (in short "Ld. Commissioner"), u/s. 250(6) of the Income-tax Act, 1961 (in short 'the Act') for the Assessment Year 2011-12.

**2.** In the instant case, as per Assessment order, a notice u/s. 148 of the Act was issued to the Assessee, in response to which the Assessee did not file his return of income and therefore, vide order dated 21.12.2018 u/s. 143(3)/147 of the Act passed by the Assessing Officer, the income of the Assessee was assessed at Rs.38,00,000/-.

**2.1** The AO by observing "as the Assessee was required to furnish his return of income as required u/s. 139(1) or by proviso but the Assessee failed to file its return of taxable income in time u/s. 139(1) of the Act before the end of the assessment year", initiated the penalty proceedings u/s. 271F of the Act for not filing the return of income in time as required u/s. 139(1) of the Act and consequently vide notice dated 21.12.2018 show caused the Assessee by fixing the penalty proceedings on 21.01.2019.

**2.2** In response, the Assessee filed its reply on dated 21.01.2019. Though the reply of the Assessee was duly considered by the Assessing Officer, but not found acceptable, **as appears from para No. 2 of the penalty order.**

**2.3** However, in the later part of para No. 2 and 3 of the penalty order, the Assessing Officer by noting the fact "**that Assessee neither attended nor filed any reply on the date and time fixed**", ultimately levied the penalty of Rs.5000/- u/s. 271F of the Act by concluding that as is evident from the foregoing, it is clear that the Assessee has failed to file its

return within time without reasonable cause in spite of ample opportunities provided.

**3.** The Assessee preferred first appeal before the Id. Commissioner and mainly claimed that the notice u/s. 148 of the Act was never served upon the Assessee, so the proceedings are void-ab-initio.

**4.** The Id. Commissioner decided the aforesaid claim/contention raised by the Assessee qua non-serving of notice by holding *“that notice u/s. 148 of the Act was issued on 27.03.2018 after taking due approval from the competent authority on the correct address of the Assessee i.e., 396, Village-Bohar Majra, PO Asthal Bohar, Rohtak-124021, which is also the present address of the Assessee and correspondence is being made on the same address during the appellate proceedings. Further, it is seen that some more notices were issued but there was no compliance which shows that the Assessee had not complied with the statutory notices without any plausible reason. Before levying penalty u/s. 271F also, due opportunity was given to the Assessee to explain his case, so I hold that there is no violation of principles of natural justice “.*

**5.** We have given thoughtful consideration to the determinations made by the authorities below. We observe that the Assessee before the Id. Commissioner claimed that no notice u/s. 148 of the Act was served upon the Assessee and the Assessee vide letters dated 06.08.2018, 24.09.2018 and 27.10.2018 objected that no notice u/s. 148 of the Act was served upon him or his Representative. However more or less, the Id. Commissioner upheld the levy of penalty on the ground that notices

have duly been served on the correct address of the Assessee and before levying the penalty, proper opportunity as per law has been given by the Assessing Officer.

**5.1** Before us, the Assessee has also placed a letter dated 28.12.2020 (which is not refuted by the Revenue Department) written by the Administrative Officer (DDO) Rohtak Range, Rohtak to the Income Tax Officer, Ward-4 cum Ward-2, Rohtak, wherein reference of notice No. 12031 dated 27.03.2018 by the ITO ward-4, Rohtak u/s. 148 of the Act has been given and in reply to RTI query raised by the Assessee, it was communicated to ITO ward-4 cum ward-2, Rohtak that the above said notice was un-delivered to the applicant and the same was received in the office between 06.04.2018 to 09.04.2018.

**5.2** Admittedly notice dated 26/27.03.2018 u/s 148 of the Act which is the foundation and goes to the root of the case, vide speed post letter No. 12031 as mentioned in the penalty order, was never served upon the Assessee as the same remained undelivered and therefore in our considered opinion the Assessee had reasonable cause for not filing its return of income as required u/s. 139(1) of the Act, in response to the alleged notice u/s. 148 of the Act. Consequently, we are unable to sustain the penalty of Rs.5,000/- imposed by the Assessing Officer and affirmed by the Id. Commissioner .

- 6.** In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 31.01.2023.

Sd/-

**(ANIL CHATURVEDI)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)**  
**JUDICIAL MEMBER**

\*aks/-