

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No. 266/Rjt/2022

निर्धारणवर्ष/Asstt. Year:2009-10

Shri Kalpataru Credit Co-op. Society Ltd. U/6, Umesh Commercial Complex, Nr. Chaudhari High School, Rajkot-360001 PAN: AAAAK0999F	Vs.	ITO Ward-1(1)(2), Rajkot
(Applicant)		(Respondent)

Assessee by :	Shri Mehul Ranpura, A.R.
Revenue by :	Shri B. D. Gupta, Sr. DR

सुनवाईकीतारीख/**Date of Hearing** : **23/01/2023**

घोषणाकीतारीख/**Date of Pronouncement**: **01/03/2023**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (in short "NFAC"), Delhi on 15.09.2022 arising in the matter of penalty order passed under Section 271(1)(b) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2009-10.

2. The only issue raised by the assessee in this appeal is that Ld. CIT(A) erred in confirming the penalty order of AO u/s 271(1)(b) of the Act.

3. Briefly, the facts are that the assessee is an AOP and subject to the proceedings under section 147 of the Act but failed to file return in response to the notice issued under section 148 of the Act. The assessee during the assessment proceedings was also issued notices under section 142(1) of the Act

but the assessee failed to comply the same. In view of above, the AO initiated penalty proceedings u/s 271(1)(b) of the Act for the failure of the assessee to comply with notices. Finally, the AO imposed the penalty for ₹10,000/- for each default committed by the assessee aggregating to Rs. 40,000/- as discussed above under the provisions of section 271(1)(b) of the Act.

4. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who confirmed the order of the AO.

5. Aggrieved by this, the assessee has come up in appeal before us.

6. The Id. AR before us submitted that none of the notice was received by the assessee and so no compliance was made. According to the Id. AR, there was no intention of the assessee for non-compliance of the notices issued upon it.

7. On other hand, the learned DR before us vehemently supported the order of the authority below.

8. We have heard the learned DR and perused and carefully considered the materials on record. At the outset it was observed that in the identical facts and circumstances, the Delhi Tribunal has decided the issue in favour of assessee in part in the case of *Smt. Rekha Rani Vs. DCIT in ITA No. 6131/DEL/2013* by observing that penalty for the first default of non-compliance of notice under section 142(1) of the Act was sufficient enough. The relevant extract of the order reads as under:

"5. We have considered the submissions of learned DR and have perused the order of the Assessing Officer and the learned CIT(A). we find that there was no reasonable cause on the part of the assessee for not appearing on the different dates of hearing before the Assessing Officer in response to notice issued under Section 143(2) of the Act. However, we find that the default is same and, therefore, penalty of Rs. 10,000/- could be imposed for the first default made by the assessee in this regard. The penalty under Section 271(1)(b) could not be imposed for each and every notice issued under Section 143(2), which remained not complied with on the part of the assessee. The provision of Section 271(1)(b) is of deterrent nature and not for earning revenue. Any other view taken shall lead to the imposition of penalty for any number of times (without limits) for the same default of not appearing in response to the notice issued under Section 143(2) of the Act. This does not seem to be the intention of the legislature in enacting the provisions of Section 271(1)(b) of the Act. In case of failure of the assessee to comply with the notice

under Section 143(2) of the Act, the remedy with the Assessing Officer lies with framing of "best judgement assessment" under the provisions of Section 144 of the Act and not to impose penalty under Section 271(1)(b) of the Act again and again. In this view of the matter, we restrict the penalty levied under Section 271(1)(b) of the Act to the first default of the assessee in not complying with the notice under Section 143(2) of the Act. Accordingly, the penalty imposed is restricted to Rs. 10,000/- as against Rs. 50,000/- confirmed by the learned CIT(A). The grounds of appeal of the assessee are thus partly allowed."

9. Respectfully following the aforesaid order of Delhi Tribunal, we set aside the order of Ld. CIT(A) and direct the AO to delete the penalty to the tune of ₹ 30,000/- and confirm the penalty of ₹ 10,000/-only. Hence, this ground of assessee's appeal is partly allowed.

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

Order pronounced in the Court on 01/03/2023 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 01/03/2023

Tanmay, Sr. PS

TRUE COPY

आदेशकीप्रतिलिपिगेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad