

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.7313/Del./2019
(ASSESSMENT YEAR : 2010-11)**

Pradeep Chauhan,
Village & PO Atterna,
District Sonipat,
Sonipat – 131 001 (Haryana).

vs.

ITO, Ward 3,
Sonipat.

(PAN : ATUPK6133D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri K.K. Mishra, Sr. DR

Date of Hearing : 15.02.2023

Date of Order : 14.03.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of Id. CIT (Appeals), Rohtak dated 28.06.2019 pertaining to the Assessment Year 2010-11.

2. The assessee has taken the following grounds of appeal :-

“1. That the Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in levying penalty u/s 271 (1)(b) which is bad in law being imposed penalty of Rs.10000 under section 271(1)(b) of the I.T. Act, without service of notice of initiation of penalty proceedings.

2. That the Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in levying penalty u/s 271 (1)(b) which is bad in law being passed impugned penalty order without recording mandatory satisfaction as per law and the impugned penalty order is illegal and void ab initio.

3. That the Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in levying penalty u/s 271 (1)(b) which is bad in law being treated the assessee in default of non compliances of notices under section 142(1) whereas no such notice was received by the assessee.”

2. Brief facts of the case are that in this case, assessment was framed under section 144/147 of the Income-tax Act, 1961 (for short 'the Act'). In the assessment, there was no cooperation by assessee. Several notices were issued, which remained uncomplied. Apart from addition of concealment of income for Rs.23,51,300/-, the AO also initiated penalty proceedings u/s 271(1)(b) of the Act for non-compliance of notice u/s 142(1). Against the levy of penalty u/s 271(1)(b) amounting to Rs.10,000/-, assessee appealed before the ld. CIT (A).

3. Ld. CIT (A) confirmed the penalty by observing as under :-

“4. I have carefully considered the facts of the case, assessee's submissions and case laws given by him and the penalty order and find that that the case was completed u/s 144 of the Act. No one attended during the assessment proceedings and even during the penalty proceedings, there was no compliance. During the appellate proceedings, the assessee only submitted that "In the present case at the very inception notice initiating penalty is not served upon the assessee in accordance with mandates of law. Moreover, it is settled position of law that such defect is not curable under the I.T. Act. Therefore, it is requested to quash the penalty order.

The assessee has obtained order of penalty and demand notice from the office of the A.O on 01.02.2019 which is evident from copy

of demand notice which is filed before your good self along with Form 35 of appeal."

From the penalty order, it is seen that the notice u/s 142(1) of the IT Act dated 28.07.2017 was duly served on the assessee and he has not complied with the same. Also, no plausible reason for the same has been given during the penalty or appellate proceedings. It is also noted that during appeal proceeding notices have been served on the same address of the assessee of Vill- Atterna; he has complied with the notices, then how is it possible that notices were not received by him when they were duly served on the same address by A.O. The case laws cited by the assessee is not applicable as in the instant case, opportunity / show cause notice was given by A.O. before levying penalty. Thus, the assessee's plea is rejected and penalty is hereby confirmed."

4. Against the above order, assessee is in appeal before us. We have heard the Id. DR of the Revenue. None appeared on behalf of the assessee despite several notices. Some of the notices have returned unserved. Hence, we proceed to adjudicate the issue by hearing the Id. DR of the Revenue and perusing the records.

5. We find that there was no compliance to the notices of the AO. Hence, on the facts and circumstances, the levy of penalty is correct. Hence, we uphold the well-reasoned order of Id. CIT (A).

6. In the result, assessee's appeal is dismissed.

Order pronounced in the open court on this 14th day of March, 2023.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 14th day of March, 2023
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Rohtak.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.