

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

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T. A. No. 215/Asr/2022
Assessment Year: 2019-20

Navjeevan Charitable
Society, Bishop House,
Civil Lines, Jalandhar
144001 (Punjab) India
[PAN: AAAAN 7997G]

(Appellant)

V. Dy. Commissioner of Income
Central Circle-1, Jalandhar

(Respondent)

Appellant by : Sh. Gunjeet Singh Syal, Adv.
Respondent by : Sh. S. R. Kaushik, CIT-DR

Date of Hearing : 01.03.2023
Date of Pronouncement : 20.03.2023

ORDER

Per Dr. M. L. Meena, AM:

The present appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana dated 26.10.2022 in respect of Assessment Year 2019-20 wherein the assessee has raised the following grounds of appeal:

- “1. That on the facts and circumstances of the case as well as in law, the Ld. CIT(A) is not justified in upholding the order passed by the Ld. AO levying penalty of Rs. 40,000/- u/s 272A(1)(d) of the Income Tax Act.
2. That the Ld. CIT(A) has failed to appreciate that in the present case no direction u/s 142(2A) of the Income Tax Act was issued by the Ld. AO to the assessee with previous approval of the Pr. CIT directing the assessee to get the accounts audited by a CA nominated by the Pr. CIT and to furnish a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require.
3. That in the present case, the Ld. AO has admitted in order u/s 154 dated 09.11.2021 that letters dated 06.05.2021, 25.05.2021, 11.06.2021 & 22.06.2021 are not “**direction**” issued u/s 142(2A).
4. That the Ld. CIT(A) has failed to appreciate that there was no deliberate default on the part of the assessee in making compliance to the letters dated 06.05.2021, 25.05.2021 .06.2021 & 22.06.2021 issued by the Ld. AO.
5. That the Ld. CIT(A) has wrongly upheld the order passed by the Ld. AO wherein penalty of Rs. 40,000/- u/s 272A(1)(d) has been levied by ignoring the submissions dated 09.07.2021, 17.07.2021 & 26.07.2021 made before the Ld. AO.
6. That without prejudice in any view of the matter, the Ld. CIT(A) should have appreciated that the assessee was prevented by reasonable cause within the meaning of section 273B of the Income Tax Act in alleged non-compliance of direction issued u/s 142(2A) and, therefore, there was no justification in the levy of penalty under section 272A(1)(d) of the Income Tax Act.
7. That the appellant craves leave to add, alter, amend or withdraw any or all the grounds of appeal on or before the date of hearing.”

2. The sole issue challenged by the appellant pertains to levy of penalty u/s 272A(l)(d) dated 31.07.2021 of Rs. 40,000/- has been levied by the Ld, AO and confirmed by the CIT(A) for non-compliance of correspondences dated 06.05.2021, 25.05.2021, 11.06.2021 & 22.06.2021 for special audit u/s 142(2A) of the IT Act.

3. At the request of the LD. Addl. CIT(DR) the case was adjourned for today i.e. 01/03/2023 for production of assessment record in order to present the material fact that the show-cause notice addressed to the assessee, was issued u/s 142(2A) of the Income Tax Act, with the prior approval of the Pr. CIT, for taking its case for special audit. However, on the said date, an adjournment application was filed by Sh. Rahul Kumar, Inspector O/o the JCIT, ITAT, Amritsar mentioning that the JCIT was not feeling well and cannot attend the hearing today, without any medical certificate or any certification of the Id. CIT-DR, the Controlling Officer or the Chief Commissioner of Income, Amritsar. Hence, the adjournment application has been rejected and the Id. CIT-DR was directed to represent the case as defendant on behalf of the department in rebuttal to the contentions of the appellant assessee. Since, the Ld. CIT(DR) failed to explain the reason for failure to produce assessment record or any material

evidence that the show-cause notice was issued to the assessee u/s 142(2A) of the Income Tax Act with the prior approval of the PCIT, specifying therein the specific point of special audit in the case of the appellant assessee. While granting adjournment to the department, it was clarified that if department fails to produce the assessment record or material evidence, to prove that specific points for taking special audit was mentioned in the notice issued to the assessee u/s 142(2A) of the Act with the prior approval of the Pr. CIT, it would be presumed that no such notice was issued to the assessee because the department has no evidence of service of the aforesaid disputed notice u/s 142(2A) of the Act on the assessee.

4. The Ld. CIT(A) while confirming the Penalty has observed as under:

“The AR has submitted that the present appeal is in respect of Assessment Year 2019-20 wherein order u/s 272A(l)(d) dated 31.07.2021 has been passed wherein penalty of Rs. 40,000/- has been levied by the Ld, AO for each assessment year for non-compliance of correspondences dated 06.05.2021, 25.05.2021, 11.06.2021 & 22.06.2021 for special audit u/s 142(2A) of the IT Act, 1961 and for reference, the AR quoted the relevant portion of the u/s 272A(l)(d) and Section 142(2A) in his submission. The AR further submitted that as per Section 142(2A), before issuing any "direction" to get the books of account audited by a special auditor, prior approval of PCIT must be taken by the AO and also the assessee has to be provided with a reasonable opportunity of being heard. As per the AR, in the present case, penalty has been levied for non-compliance of correspondences dated 06.05.2021, 25.05.2021, 11.06.2021 & 22.06.2021 which as per the AR, are not "directions" issued u/s 142(2A), as neither prior approval of PCIT was taken nor was the assessee provided a

reasonable opportunity of being heard and vide these letters time was extended to get the accounts audited. Therefore, as per the AR, penalty u/s 272A(1)(d) vide order dated 31.07.2021 is illegal, arbitrary and unjustified. It is also mentioned by the AR that the assessee had filed a rectification application u/s 154 dated 07.09.2021 before the AO on the same ground and the AO while dismissing the said application vide order dated 09.11.2021 admitted that letters dated 06.05.2021, 25.05.2021, 11.06.2021 & 22.06.2021 are not "directions" issued u/s 142(2A) as the said "directions" was issued on 24.02.2021 and letters dated 06.05.2021, 25.05.2021, 11.06.2021 & 22.06.2021 are letters in continuation of "directions" u/s 142(2A) issued on 24.02.2021 and the AR also quoted the relevant part of the rectification order in his submission. Lastly, the AR submitted that the special audit u/s 142(2A) of the IT Act, 1961 was completed by the Auditor vide alleged report dated 13.09.2021. Therefore, under no stretch of imagination it can be said that the assessee has failed to comply with a direction issued u/s 142(2A) dated 24.02.2021. Accordingly, as per the AR, under such circumstances, penalty u/s 272A(1)(d) vide order dated 31.07.2021 cannot be sustained.

The facts of the case have been gone through. The AR has inter-alia relied on the following issues:

1. That the various communications sent by the AO for getting the Special Audit done were letters and not directions u/s 142(2A).
2. That prior approval of PCIT was not taken nor the assessee was provided reasonable opportunity of being heard.
3. That in the rectification order dated 07.09.2021, the AO has used the word 'letters' for various communications issued by the AO and the said communications are not directions.
4. The Special Audit u/s 142(2A) stands completed vide report dated 13.09.2021.

The communications issued by the AO to the assessee have been examined. It is seen that the AO in all the communications has very clearly mentioned that the time limit to extend the Special Audit has been made in consequence to the non-compliance made by the assessee to get the Special Audit done. The AO has repeatedly pointed out that the requisite

data/documents/books required for Special Audit has not been provided by the assessee in consequence to which, the date for Special Audit has been extended. Nowhere from the communications made by the AO, it is seen that the said communications are not directions but only letters as in each & every correspondence the AO has requested the assessee to provide the documents sought and cooperate with the Special Auditor, so that the Special Audit could be completed in time. To deviate from the issue by considering the said communications as letters instead of directions shall not be in the fitness of things, The said communications fall very well within the meaning of directions as specified u/s 142(2A) of the Income Tax Act, 1961.

As far as, the statutory approval of the PCIT is concerned, it is expressly mentioned in the penalty order dated 31.07.2021 in para 9, that the same was obtained vide letter No. 6292 dated 28.03.2021 of PCIT. Hence this contention of the appellant does not stand ground.

Further, the AR has contended that reasonable opportunity of being heard was not given before initiating action u/s 142(2A) of the Income Tax Act, 1961. It is seen from para 8 of the penalty order dated 31.07.2021 that the detailed show-cause was issued to the assessee on 12.02.2021 and in response to which, the assessee submitted his reply on 16.02.2021 and a speaking order was passed by the AO removing the objections on 24.02.2021. Hence, the contentions of the appellant do not stand ground here as well.

The contention that in the rectification order, the AO has used the word 'letters' instead of directions is inconsequential as the letter itself is containing the directions to the assessee to get the Special Audit done. The AR has not been able to provide any reasonable cause for non-compliance within the meaning of Section 273B of the Income Tax Act, 1961.

Finally, the AR has conveyed that the Special Audit has already been completed dated 13.09.2021. It is pertinent to mention here that the Special Audit has been done on the specific directions of the Hon'ble High Court of Punjab & Haryana in the connected cases of Father Anthony Madasser and another vs. Principal Director of Income Tax Ludhiana and Others in CWP No. 29377-2019 (O & M) dated 22.09.2021 and the relevant part of the order, is reproduced below:

"Meanwhile proceedings may go on, but no final assessment order shall be passed."

It is obvious from the above circumstances that there was no voluntary compliance from the assessee to get the Special Audit done despite repeated directions from the AO. The Hon'ble High Court allowed the proceedings to continue in the cases of Antony Madassery with a direction that no final assessment order shall be passed in the matter. In the light of above, the Special Audit was conducted in the cases of Antony Madassery as well as the assessee society. This does not absolve the assessee of the non-compliance to various directions issued u/s 142(2A).

The above judgments pertain to penalty levied u/s 271(l)(b) but are equally applicable to penalties levied u/s 272A(l)(d) as in both the sections, the penalty is leviable in cases of non-compliance to directions to get books audited u/s 142(2A). Hence, the contentions of the AR, in the present case, that as the Special Audit has been completed, hence the penalty order should be dismissed does not hold ground as the penalty has been levied on account of non-compliance to the directions u/s 142(2A) of the Income Tax Act, 1961.”

5. The Ld. Counsel for the assessee submitted that on the fact and in law the Ld. CIT(A) was not justified in upholding the order passed by the Ld. AO levying penalty of Rs. 40,000/- u/s 272A(1)(d) of the Income Tax Act; that the Ld. CIT(A) has failed to appreciate that in the present case no direction u/s 142(2A) of the Income Tax Act was issued by the Ld. AO to the assessee with previous approval of the Pr. CIT directing the assessee to get the accounts audited by a CA nominated by the Pr. CIT and to furnish a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require; that in the present case, the Ld. AO has admitted in order u/s 154 dated 09.11.2021

that letters dated 06.05.2021, 25.05.2021, 11.06.2021 & 22.06.2021 are not “direction” issued u/s 142(2A); that the Ld. CIT(A) has failed to appreciate that there was no deliberate default on the part of the assessee in making compliance to the letters dated 06.05.2021, 25.05.2021 .06.2021 & 22.06.2021 issued by the Ld. AO; that the Ld. CIT(A) has wrongly upheld the order passed by the Ld. AO wherein penalty of Rs. 40,000/- u/s 272A(1)(d) has been levied by ignoring the submissions dated 09.07.2021, 17.07.2021 & 26.07.2021 made before the Ld. AO and that without prejudice in any view of the matter, the Ld. CIT(A) should have appreciated that the assessee was prevented by reasonable cause within the meaning of section 273B of the Income Tax Act in alleged non-compliance of direction issued u/s 142(2A) and, therefore, there was no justification in the levy of penalty under section 272A(1)(d) of the Income Tax Act. In support, the counsel filed a brief synopsis. The relevant part is reproduced below:

“1. Section 272A(1)(d) is as under:

(1) If any person,-

.....

.....

(d) fails to comply with a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or fails to comply with a direction issued under sub-section (2A) of section 142.

2. Section 142(2A) is as under:

“If at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts, volume of the

accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary' so to do, he may, with the previous approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, direct the assessee to set the accounts audited by an accountant, as defined in the Explanation below subsection (2) of section 288, nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in this behalf and to furnish a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require.

Provided that the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard. ”

3. That as per Section 142(2A), for a “direction” to get the books of account audited by a special auditor following perquisites have to be met by the Ld. AO:

- a. The assessee must be provided with a reasonable opportunity of being heard.
- b. Prior approval of PCIT must be taken by the AO.
- c. **Direct the assessee to get the accounts audited setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require.**

4. In the present case, penalty has been levied for non-compliance of letters dated 06.05.2021, 25.05.2021, 11.06.2021 & 22.06.2021.

(Page 35-36 of Paper Book)

5. Be that as it may, **letters dated 06.05.2021, 25.05.2021, 11.06.2021 & 22.06.2021 are not “direction” issued u/s 142(2A), as no such particulars have been prescribed for which the exercise of special audit was to be undertaken nor prior approval of PCIT was taken nor was the assessee provided a reasonable opportunity of being heard as per section 142(2A) and proviso thereto.** Vide these letters simply time was extended to get the accounts audited. Therefore, penalty u/s 272(1)(d) vide order dated 31.07.2021 is illegal, arbitrary and unjustified.

6. *Be that as it may, no direction was ever issued to the assessee during the course of assessment proceedings containing particulars for which the exercise of special audit was to be undertaken. **Letter dated 06.04.2021 of Ld. AO was neither issued and/or served on the assessee. (Page 31-34 of paper book)***

7. *It is pertinent to mention here that the assessee had filed a rectification application u/s 154 dated 07.09.2021 before the Ld. AO on the same ground and the Ld. AO while dismissing the said application vide order dated 09.11.2021 admitted that letters dated 06.05.2021, 25.05.2021, 11.06.2021 & 22.06.2021 are not "direction" issued u/s 142(2A) as the said "direction" was issued on 24.02.2021 and letters dated 06.05.2021, 25.05.2021, 11.06.2021 & 22.06.2021 are letters in continuation of "direction" u/s 142(2A) issued on 24.02.2021. The operating part of order u/s 154 dated 09.11.2021 is as under:*

"In respect of the claim that no direction u/s 142(2A) were issued vide this office letters dated 06.05.2021, 25.05.2021, 11.06.2021 & it is noticed that said letters are nothings but letters in continuation to directions issued u/s 142(2A) vide letter dated 24.02.2021. Further, before issuing directions for special audit u/s 142(2A) vide letter dated 24.02.2021, this office had taken prior approval of Pr. CIT (Central), Ludhiana and provided the reasonable opportunity of being heard. Therefore, there is no mistake apparent from records and the rectification application filed by the assessee stands rejected. "

(Page 1-2 of Supplementary paper book)

In the present case no "direction" u/s 142(2A) was ever issued to the assessee during the course of assessment proceedings containing particulars for which the exercise of special audit was to be undertaken and the Ld. AO has admitted in order u/s 154 dated 09.11.2021 that letters dated 06.05.2021, 25.05.2021, 11.06.2021 & 22.06.2021 are not "direction" issued u/s 142(2A) but are letters in continuation of "direction" u/s 142(2A) issued on 24.02.2021. Therefore, there is no failure on the part of the assessee to comply with a "direction" u/s 142(2A). Under such circumstances, penalty u/s 272(l)(d) vide order dated 31.07.2021 cannot be sustained."

भारत सरकार/GOVERNMENT OF INDIA
Office of the Joint Commissioner of Income Tax(OSD), Central Circle-I,
Aaytan Tower, Civil Lines, Near SBI, Jalandhar (Punjab)- 144001

दूरभाष/Phone: 0181-2235285/Fax:2233263, ईमेल/Email:jalandhar.dcit.cen1@incometax.gov.in

प.सं./No.: CC-I/JAL./Misc./2020-21/ 29

दिनांक/Dated: 06.04.2021

To

M/s Surinder Mahajan & Associates,
74, Vijay Nagar, Mahabir Marg,
Jalandhar.

Received 5/10/21
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Sir,

Subject: Special Audit of accounts u/s 142(2A) of the Income tax Act, 1961 in the following cases:

1. Anthony Madasser Prop: M/s Navjeevan Enterprises, G-12, GT Road, Guru Gobind Singh Avenue, Jalandhar PAN APQPM9874B (A.Ys. 2013-14 to 2019-20) = vinay4041@gmail.com
2. M/s Navjeevan Charitable Society, Bishops House, Civil Lines, Jalandhar PAN AAAAN7997G. (A.Y 2019-20) office@svaltax.com
3. M/s FMJ Franciscan Missionaries of Jesus Charitable Society, Jalandhar PAN AAAAF5064C (AY 2019-20) fmjjalandhar@gmail.com
4. M/s Sahodhaya, Office No.2 2nd Floor, Jai Singh Complex, Model Town, Ludhiana PAN ACRFS2734E (A.Y. 2019-20) sahodhaya@gmail.com

It is to inform that vide letter F.No.Pr.CIT(C)/Ldh./142(2A)/2020-21/8293 dated 28.03.2021 the competent authority, the Pr. Commissioner of Income tax (Central), Ludhiana has approved special audit of accounts under section 142(2A) of the Income tax Act, 1961, the copy of the above order has already been endorsed to you. Therefore, you are requested to conduct the audit of the books of accounts of the following assessee as under :

Assessee	PAN	A.Y.
Sh. Anthony Madasser proprietor of the M/s Navjeevan Enterprises	APQPM9874B	2013-14 to 2019-20
Navjeevan Charitable Society	AAAAN7997G	2019-20
FMJ Franciscan Missionaries of Jesus Charitable Society	ACRFS2734E	2019-20
M/s Sahodhaya, Ludhiana	ACRFS2734E	2019-20



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6. From the above pointed out discrepancies/deficiencies, following conclusion can be made:

- (i). Reconcile the credits / deposits in bank account with the books of account.
- (ii) Examine the applicability of section 36
- (iii) Examine the compliance of section 12AA and 10(23C) of the Income tax Act, 1961.
- (iv) Examine and report particulars of payments made to persons specified under section 13(3)/40A(2)(b).
- (v) Examine and report the detailed particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted.
- (vi) Examine and report the detailed particulars of each repayment of loan or deposit in an amount exceeding the limit specified in section 269T otherwise than by an account payee cheque or an account payee bank draft.
- (viii) Examine the introduction of capital / funds and unsecured loans, if any.
- (ix) Examine and report the payment in contravention of provisions of section 40A(3) of the Act, 1961.

Keeping in view the size and quality of the documents / books of accounts to be audited, the Special Audit of the above 4 assessee is to be completed within 80 working hours. Further, you are requested to visit the office of the undersigned and examine the seized / impounded documents on any pre fixed date.

Yours faithfully,

Gagan Kundra
(Dr. Gagan Kundra)
Joint Commissioner of Income tax(OSD)
Central Circle 1, Jalandhar

Copy to

1. The Pr. Commissioner of Income tax (Central), Ludhiana.
2. The Addl. Commissioner of Income tax, Central Range, Jalandhar.

Gagan Kundra
(Dr. Gagan Kundra)
Joint Commissioner of Income tax(OSD)
Central Circle 1, Jalandhar



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6. Per contra, the Ld. DR stands by the impugned order, However, he failed to produce the assessment record or material evidence in rebuttal as above.

7. Heard the rival contentions, perused the material on record and written submission on record. Admittedly, the AO has written letters dated 06.05.2021, 25.05.2021, 11.06.2021 & 22.06.2021 which are not “direction” issued u/s 142(2A), with the approval of Ld PCIT, as neither such particulars have been prescribed for which the exercise of special audit was to be undertaken with the prior approval of PCIT nor the assessee provided a reasonable opportunity of being heard as per section 142(2A) and proviso thereto. In our view, merely writing letters to the assessee without mentioning the issues/points, proposed for special audit without taking the prior approval of the PCIT is bad in law. Therefore, penalty of Rs, 40,000/- levied u/s 272(1)(d) vide order dated 31.07.2021 is illegal and unjustified.

8. The Ld. CIT(A) has failed to appreciate the fact that the letters of communication of special audit in the present case were no “direction” u/s 142(2A) ever issued to the assessee during the course of assessment proceedings, containing particulars for which the exercise of special audit

was to be undertaken and further, the Ld. AO has admitted in order u/s 154 dated 09.11.2021 that letters dated 06.05.2021, 25.05.2021, 11.06.2021 & 22.06.2021 are not “direction” issued u/s 142(2A) but are letters in continuation of notice u/s 142(2A) issued on 24.02.2021.

9. It is pertinent to mention here that the AO has written a letter to M/s Surendra Mahajan and Associates as above, for special audit of four case including the appellants but, the AO had never issue a specific notice with point of special audit to the appellant assessee u/s 142(2A) of the Act with the Approval of the PCIT. In view of the matter we hold that there was no failure on the part of the assessee to comply with a “direction” u/s 142(2A), and accordingly, penalty u/s 272(l)(d) vide order dated 31.07.2021 cannot be sustained.

10. In the backdrop of the aforesaid discussion, we accept the grievance of the assessee as genuine and justified. As such, the penalty of Rs, 40,000/- levied u/s 272(1)(d) of the Act, is hereby deleted.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 20.03.2023

**Sd/-
(Anikesh Banerjee)
Judicial Member**

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

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By Order