

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR  
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**50/Jodh/2020**  
**(ASSESSMENT YEAR- 2015-16)**

Shri Virendra Singh Rathore 130, Road No. 5, Subhash Nagar Distt. Udaipur (Raj)	Vs	The ITO Ward 1(1) Udaipur
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AMFPR 9675 K</b>		

<b>Assessee By</b>	None
<b>Revenue By</b>	Shri S.M. Joshi, JCIT- DR
<b>Date of hearing</b>	21/03/2023
<b>Date of Pronouncement</b>	23 /03/2023

**ORDER**

**PER: SHRI MANISH BORAD, AM**

This is an appeal filed by the assessee against the order of the Id.  
CIT(A) -1, Udaipur dated 30-07-2019 for the assessment year 2015-  
16 raising therein following grounds of appeal.

‘1. That in the facts and in the circumstances of the case, the AO has wrongly imposed penalty u/s 271(1)(b) for Rs.10,000/-.

2. That in the facts and in the circumstances of the case, penalty u/s 271(1)(b) date for non-compliance was not mentioned in the order.

2.1 Apropos solitary ground of the assessee as to the imposition of penalty amounting to Rs.10,000/- /s 271(1)(b) of the Act, the facts as emerges from the order of the ld CIT(A) are as under:-

5. I have considered the facts of the case, penalty order and appellant's written submissions. It is seen from the penalty order that during the course of assessment proceedings, the Assessing Officer issued statutory notice u/s. 142(1) dated 07-11-2017, fixing the hearing on 14-11-2017. However, on this date, the assessee neither appeared personally or through Authorized Representative nor made any written submissions. Accordingly, the AO initiated the penalty proceeding u/s. 271(1)(b) by way of notice dated 16-11-2017. Before this notice, the AO had issued notice u/s. 143(2) of the Act on 18-09-2017 which was also not complied with by the assessee. The appellant has wrongly contended before me that no notice was served upon him whereas the fact is that all the aforesaid notices were sent by the Assessing Officer on the address of the assessee through speed post or served through notice server. Merely claiming that these notices were not served upon him. does not help the cause of the appellant. The Assessing Officer sent these notices on the address given by the appellant. The show-cause notice for imposition of penalty u/s 271(1)(b) was also sent on the same address and same was duly complied with as is evident from the assessment order. The very fact that the Assessing Officer has to resort to sec. 144 for completing the assessment further proves that assessee has deliberately and willfully avoided compliance of statutory notices. During the course of the present appellate proceeding, the appellant failed to give any proper explanation for these non-compliances. No evidences whatsoever have been filed to substantiate his contention that actually these

notices were not served upon the assessee. Further, it is observed that the appellant also wrongly contended that there was no mention of date for which penalty u/s. 271(1)(b) was imposed. The AO in the penalty order specifically mentioned that the penalty u/s 271(1)(b) was being imposed for non-compliance of notice u/s. 142(1) dated 07-11-2017.

Considering the facts of the case as discussed above, it is held that the AO is justified in levying the penalty of Rs. 10,000/- u/s. 271(1)(b) of the Act which is hereby upheld. The grounds of appeal raised by the appellant regarding this issue are dismissed.

2.2 After hearing both the parties and perusing the materials available on record, it is noted from the assessment order that the AO made the additions on the ground that no supporting documentary evidence had been produced/ furnished by the assessee during the course of assessment proceedings u/s 143(3) of the Act. It is also pertinent to mention that in penalty proceedings u/s 271(1)(b) of the Act, the AO vide order dated 24-05-2016 imposed a penalty of Rs.10,000/- u/s 271(1)(b) of the Act which has been confirmed by the ld CIT(A). The Bench noted that assessment u/s 143(3) has been completed by the AO vide his order dated 18-12-2017 and thus made the addition. We observe that the assessment has been completed by the AO u/s 143(3) of the Act which shows that the assessee had appeared on other dates of hearing and cooperated in the assessment

proceedings and under these circumstances there is no justification to impose penalty u/s 271(1)(b) of the Act. Therefore, we do not concur with the findings of the ld CIT(A) and the same is set aside and impugned penalty levied by the AO is deleted. Thus the appeal of the assessee is allowed.

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

Order pronounced in the open Court on 23 /03/2023.

Sd/-

(KUL BHARAT)  
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)  
ACCOUNTANT MEMBER

Dated : 23/03/2023

*\*Mishra*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The DR
5. Guard File

Assistant Registrar  
Jodhpur Bench