

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 73/JP/2023
निर्धारण वर्ष / Assessment Years : 2017-18

Anshu Sharma 183 Raghukunj, Nemi Sagar Vaishali Nagar, Jaipur	बनाम Vs.	Income Tax Officer Ward 1(3), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: DZXPS 6002 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Praveen Saraswat (CA)
राजस्व की ओर से / Revenue by : Smt Monisha Chaudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 21/03/2023
उदघोषणा की तारीख / Date of Pronouncement: 11/04/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 13/01/2023 [here in after (NFAC)] for assessment year 2017-18 which in turn arise from the order dated 16.12.2019 passed under section 143(3) of the Income Tax Act, by the ITO, Ward 3 (5), Jaipur.

2. Succinctly, the fact as culled out from the records is that e-return declaring income of Rs. 2,31,510/- was e-filed by the assessee on 28.07.2017. The case was selected for limited scrutiny by CASS. Notice u/s 143(2) was issued to the assessee on 29.09.2018 which was duly served upon the assessee on its registered e-mail id as well as by speed post. Notice u/s 129 & u/s 142(1) were issued by the undersigned on 22.08.2019 alongwith annexure of queries to file reply on or before 30.08.2019. But no reply was filed by the assessee on the said date of hearing. Thereafter, one more opportunity was granted to the assessee vide this office notice u/s 142(1) dated 01.10.2019 to file reply on 11.10.2019, but again no compliance was made by the assessee.

3. Again to provide natural justice, one more opportunity for reply was granted to the assessee by issuing final show cause notice u/s 142(1) of the I.T. Act, 1961 to the assessee on 01.11.2019 to file reply by 11.10.2019. In response, the assessee filed reply online on 04.11.2019 relevant to scrutiny reasons received from assessee on ITBA system.

4. Aggrieved from the order of the Id. AO levying penalty of Rs. 20,000/- u/s 272A(1) (d) of the Income Tax Act. The assessee has preferred an

appeal before Id. CIT(A). The relevant finding of the Id. CIT(A) recorded in para 6 of his order and the same is reproduced herein below.

“6.0 ANALYSIS OF THE FACTS AND ADJUDICATION OF THE GROUNDS:

6.1 The assessee has raised six grounds of appeal, out of which Ground No. 6 is general in nature and, hence, do not call for adjudication. Ground Nos. 1 to 5 are raised against the AO's action in levying a penalty of Rs.20,000/- u/s, 272A(1)(d) of the Act. These grounds are taken up for discussion and adjudication in the subsequent paragraphs of this order.

6.2 Coming to the factual-matrix of the case, for the impugned AY 2017-18, the assessee filed the return of income electronically on 28.07.2017, declaring a total income of Rs.2,31,510/-. During the time of assessment proceedings, appellant failed to comply with the two initial notices issued u/s 142(1). Later, responded and submitted the information called for against the notices 142(1) and show cause notice issued to the appellant during the assessment proceedings COME TAX REPORTMEN

6.3 In view of the above, AO completed the assessment u/s. 143(3) of the Act dated 16.12.2019. Further, the AO initiated the penalty proceedings against the assessee u/s.272A(1)(d) of the Act dated 01.01.2019. above the Accordingly, the AO passed the impugned penalty order u/s. 272A(1)(d) of the Act dated 18.02.2022.

6.4 Coming to the merits of the penalty case, as seen from the documentary evidence placed on record, it is amply clear that, prior to imposition of the impugned penalty u/s. 272A(1)(d) of the Act, the AO issued a show cause notice to the assessee calling for her objections, if any. However, the assessee did respond only once as under-

"I am not a computer literate person and I do not have regular access to my e-mail account i.e. asbjgwels@email.com. Notice might have been mailed at the said address but the same were never received by me."

Now, during the appellate proceedings vide statement of facts/Grounds of appeal, she had stated that in one occasion the notice u/s 142(1) was not delivered to her mail. However, the same plea was not made before the AO to counter the same during the penalty proceedings. Further, the registered mail id was not changed during the assessment proceedings and the mail was delivered when the scrutiny initiation notice i.e., 143(2) was served on her & appellant responded as per her submissions in appellate proceedings to the notice u/s 143(2). Further, all other notices were also

served on her through the same mail id. The same mail id is being continued in the present appeal proceedings as per the Form No.35 filed by the appellant.

6.5 At this juncture, it may be noted that the assessee did not offer any acceptable reasons. The appellant is regular in filing of the returns of income. Therefore, she is expected to be knows the procedures of service of the notices and to comply with the same. Appellant is aware of the selection of her to the scrutiny when the notice u/s 143(2) is served on her. She had responded to that notice. As seen from the assessment order, it is evident that there is a sufficient gap between the date of issuance of notice u/s 143(2) and notices calling for information u/s 142(1). The notices u/s 143(2) & 142(1) are sent to e-filing portal and e-mail. The service of the notice in the e-filing portal or e-mails would have been alerted through SMS of the registered mobile also..

6.6 If the argument of the appellant is accepted that she is a house wife and not having the computer knowledge: filing of the returns also could also become late or not filed at all. But, the assessee is filing the returns regularly. This shows that the appellant's representative is taking care of the filing the returns and making the compliances to the scrutiny prior and after the selection of case for the scrutiny. Once the compliance is made to the notice issued u/s 143(2) as submitted in the written submissions, the same appellant cannot take a plea that she is not aware of the procedures in e-compliance with the Department.

6.7 Accordingly, after having analyzed the fact-situation, it is amply clear that:

(1) It is demonstrated that the assessee received the statutory notices u/s. 142(1) of the Act dated 22.08.2019 and 01.10.2019 issued by the AO through the mail id- asbjgwels@email.com. It is an admitted fact that even after the receipt of the statutory notice 142(1) of the Act, the assessee did not comply with the terms of the notices and, therefore, the assessee did not furnish the information and documentary evidence sought for by the AO.

(ii) In view of the non-compliance with the notice issued u/s. 142(1) of the Act, the AO was forced to provide the opportunities during the assessment proceedings inspite of not seeking the adjournment by the appellant. The same is considered as disrespect on part of the appellant to the statutory provisions inter alia notices issued & served to carryout legal procedure.

(iii) The reasons submitted by the appellant are not considered to be real for non-compliance to the notices issued u/s 142(1). No one stops the assessee to ask

for extension of time to comply with the notices in furnishing the information. Subsequent compliance to the notices or compliance with the subsequent notices calling for the same information would not be a concern while deciding the penalty imposed u/s 272A(1)(d). The taxpayer is expected to furnish the information as called for in the notice issued u/s 142(1) or seek the adjournment with filing the reasons for such adjournment on or before the due date specified in the notice issued u/s 142(1)

(v) Even during the course of appellate proceedings, the assessee has not adduced any evidence to demonstrate that there was reasonable cause for her failure to comply with the statutory notice issued u/s. 142(1) of the Act within the meaning of Sec.273B of the Act. There is also a complete non-compliance to the notices issued u/s 250 of the Act. Till now, the appellant had been served with 5 notices. Whereas, there is an occasional response for the appeal proceedings pending as on date on quantum appeal filed against the additions made u/s 143(3) at the same time no compliance for the appeal proceedings on hand. This shows that the appellant is not much concerned about the small penalty levied vis-à-vis demand raised in the order u/s 143(3).

6.8 In view of the above, I don't find fault with the AO in initiating the penalty proceedings as well as levying the penalty u/s. 272A(1)(d) of the Act, for the assessee's failure to respond to the notices and not offering any acceptable reasons for her failure to respond to the notices u/s 142(1) in two occasions. Therefore, it is amply clear that the assessee has not fulfilling the conditions envisaged u/s. 273B of the Act. Accordingly, I endorse the action of the AO in levying a penalty of Rs.20,000/- u/s. 272A(1)(d) of the Act.

6.9 The appellant has not brought out any facts relating to the circumstances which prevented her from compliance during the assessment proceedings. On verifying the facts from the records it appears that there is a gross negligence or deliberate inaction or lack of bonafide on part of the appellant. Thus, the grounds of appeal raised by the assessee on this issue are dismissed."

5. As the assessee did not find any favour from the order of Id. CIT(A).

The assessee has preferred this appeal before this Tribunal on the grounds reproduced herein below.

“1. Ld. CIT and AO ignored the reasonable cause, while levying penalty, that non-compliance of the notice u/s 142(1) was not deliberate or wilful on the part of the assessee and, being a house-hold lady, was not aware with the computer operations and could not come to know about the said the so called notice.

2. Ld. CIT and AO have ignored the reasonable cause that year 2019 was the first year of switching to digital mode of serving from physical service of notice, and the small assesseees can not be expected to be aware with such innovations in the short period.

3. Ld. CIT and AO have not appreciated the fact that after coming to know about the notice on 01/11/2019 from her CA, there was no failure in compliance of future notices by assessee and all required information for the purpose of assessment were submitted on 04/11/2019 and 08/11/2019, well before the appointed date of 11/11/2019. The assessment order was completed on 16/12/2019 u/s 143(3)

4. Ld. CIT has erred in confirming the levy of the of the penalty. Penalty Rs. 20000/- has been levied for compliance failure on 2 occasions i.e. on 22/08/2019 and 01/10/2019 @Rs. 10000/- occasion. However, the notice dated 01/10/2019 was belatedly complied with on 04/11/2019 and 08/11/2019. Penalty u/s 272A(1)(d) is leviable on complete failure to reply and not on delayed reply.

5. That the appellant craves leave to reserve to itself the right to add, alter, amend, substitute, withdraw and/or any ground(s) of appeal at jor before the time of hearing.”

6. To support various contentions raised by the Id. AR, he has relied upon the relevant written submission and the same is reproduced herein below.

“The penalty amounting Rs. 20000/- u/s 272A(1)(d) has been levied by the Assessing Officer for non-compliance to the notices issued u/s 142(1) of the Act and the same was upheld by Ld. CIT(A). Appellant makes following submissions in support of Grounds:

1. Following is the tabulation of notices issued and respective compliance:

Date of	Due date of	Date of	Notice	Acknowledgement
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issuing notice	compliance	Compliance by assessee	issued u/s	No. of reply at the Income Tax portal
29/08/2018	04/09/2018	03/09/2018	143(2)	03091810300987
22/08/2019	30/08/2019	Could not be compiled due to non-receipt	142(1)	
01/10/2019	11/10/2019	04/11/2019	142(1)	04111911979261
		08/11/2019		08111912038377
01/11/2019	11/11/2019	02/11/2019	142(1)	02111911964381
		08/11/2019		08111912038922

2. In response to the penalty notice dated 01/11/2019, assessee submitted as under on 04/11/2019:

Please refer your notice dated 01/11/2019 asking me to appear personally or thru A/R to explain the reasons for having not complied the notice u/s 142(1) dated 22/08/2019 due to be filed on or before 30th August, 2019. It has to be submitted that:

a) I am not a computer literate person and I do not have regular access to my e-mail account

i.e. asbjewels@gmail.com. Notice might have been mailed at the said address but the

same were never received by me.

b) No physical notice was served upon me and therefore, I could not attend the proceedings.

c) My CA cum AR informed me on 01/11/2019 about the said notice and I immediately

sought the time upto 15/11/2019 so as to submit all information required by you for

completing the assessment.

Therefore, please do not levy the penalty as the act was not intentional or mala-fide and it was just because of lack of computer-literacy on my part.

3. Assessee's failure to reply was never intentional and she complied with notices without any delay after coming to know about such notices. The assessee was

not having any business activity during this period, therefore, was not having any staff to operate computer or check mails on daily basis.

4. The Department was gradually moving towards faceless assessment /e-assessment and hence, stopped physical serving notices to the assessee in the year 2019. This being the first year of online interface, the assessee was not aware that notices were being issued electronically.
5. Chartered Accountant of the assessee was checking the Income Tax portal on 01/11/2019 for the notices of those clients where the first notices were issued u/s 143(2)/148. He came across the notices and informed the assessee about them. It was only after such communication that the assessee came to know about the notices of ongoing assessment proceedings. Thereafter, the assessee filed the replies vide letter dated 02/11/2019, 04/11/2019 and 08/11/2019. Though the last date fixed for submission was 11/11/2019, but the assessee without waiting for the last date, completed the last filing on 08/11/2019 itself, and asked the Ld. AO to '*Please raise further queries, if any*'. The Assessment was completed under section 143(3) of the Act vide order dated 16/12/2019.

The facts narrated above would show that the assessee has not wilfully ignored the notices issued by the Assessing Officer. The non-compliance of the notices issued under section 142(1) of the Act was for the *bonafide* reasons explained above.

6. Ld. AO had erred in levying the penalty also. Appellant takes the liberty to reproduce the provisions of said Section:

272A. (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, he shall pay, by way of penalty, a sum of ten thousand rupees for each such default or failure.

AO had levied the penalty @ Rs. 10000/- for each failure to respond to two (2) notices i.e. dated 22/08/2019 and 01/10/2019. Appellant submits that '*failure*' took place only for the one notice dated 22/08/2019. In case of notice dated 01/10/2019, though the compliance was delayed i.e. on 04/11/2019 and 08/11/2019 but there was no failure to comply. Copies of acknowledgement attached as Page No. 5 and 6 shows the date of notices

7. Appellant places reliance on the judgement of Hon'ble co-ordinate Mumbai bench in the case of ITA NO.1870/MUM/2020 (A.Y.2017-18) Triumph International Finance India Limited, order pronounced on 10/03/2022. Copy of the order is being attached with this submission (*at page No. 7 to 10*) , before your honours.

Hence, the appeal of the assessee deserves to be allowed.”

7. In addition to the above written submissions, the Id. AR of the assessee fairly accepted that the matter was decided ex party on account of the assessee being not lady dependent upon the others two respond the notices and therefore, it remained non-compliance before Id. CIT(A) but the at the same time, the Id. AR of the assessee submitted that the levy of penalty u/s 272A(1) (d) of the Income Tax Act is on account of failure of the assessee to comply with the provisions of section 142 notices which alternatively complied of the order for the year under consideration has been passed u/s 143(3) of the Act. Therefore, there is no reason to sustain the penalty passed u/s 272A(1) (d) of the Income Tax Act. He has also submitted that there is only one default and that assessee was not accustomed use of the e-mail and the assessee has well within the law participated in the assessment proceedings and the order has been passed on merits u/s 143(3) and not u/s 144 of the Act. Basis on these arguments, the Id. AR of the assessee prayed that the levy of penalty considering the fact is not sustainable.

8. Per contra, the Id. DR relied upon the order of the lower authorities and submitted that the assessee is already in filing ITR on e-filing system and therefore, considering the fact of the case no systematical view can be taken in the matter.

9. We have heard the rival contentions and perused the material placed on record. It is not disputed that the assessee has participated in the assessment proceedings and ultimately the order has been passed u/s 143(3) of the Act. The only notice which remained uncompiled is on account of the fact that the assessee is a lady not accustomed and has to depend on the others. We have also persuaded the decision of the Mumbai Co-ordinate Bench, in the case of Triumph International Finance Ltd. vs. DCIT, Central Circle-07(1), Mumbai in ITA No. 1870/Mum/2020 dated 10/03/2022 submitted that considering the fact of the case relied upon and facts of case are similar and therefore, the decision taken in that case squarely applicable to the facts of this case. The same is reproduced herein below:-

“4. We have heard the submissions made by rival sides. The Assessing Officer vide order dated 21/12/2019 has levied penalty of Rs.10,000/- under section 272A(1)(d) of the Act for non-compliance of the notice issued under section. 142(1) of the Act. Undisputedly, no explanation was furnished by the assessee before the Assessing Officer for non-compliance of the notice under section 142(1) of the Act. As per the contentions of Id. Authorized Representative of the assessee, the notice under section

142(1) of the Act was served on the assessee electronically. The Department was gradually moving towards e-assessments and the notices were being served to the assessee online/electronically and the year 2019 being the first year of this shift from physical to electronic mode coupled with the fact that assessee was not carrying out any business operations during the relevant period and hence, was working on minimal employees, the employees of the assessee failed to take note of the notice issued electronically. We are satisfied that the assessee has been able to show reasonable cause for not responding to the initial notice issued under section 142(1) of the Act. It is pertinent to mention here that subsequently on learning about ongoing assessment proceedings, the assessee appeared before the Assessing Officer and furnished the requisite details. The Assessing Officer after taking note of the documents/submissions of the assessee has passed the assessment order under section 143(3) of the Act. It is not a case of absolute non-appearance of the assessee before the Assessing Officer.

5. The first appellate authority has rejected the explanation furnished by the assessee for non-compliance of the notice issued under section 142(1) of the Act merely for the reason that during penalty proceedings under section 272A(1)(d) of the Act, the assessee has not stated the reasonable cause. We are not in agreement with the findings of CIT(A). The assessee has explained that about ongoing assessment proceedings the assessee came to know only on receipt of order u/s 272A(1)(d) of the Act and demand notice. The explanation furnished by the assessee before the CIT(A) and before the Tribunal is consistent. We are satisfied that nonappearance of the assessee in response to the initial notice under section 142(1) of the Act was not deliberate. The year 2019 being the initial year of shift towards digital and electronic mode, the mistake appears to be bonafide. The assessee has been able to show reasonable cause for the failure to comply with statutory notice u/s. 142(1) of the Act. Thus, in our view penalty levied u/s. 272A(1)(d) of the Act is unsustainable. The Assessing Officer is directed to delete the penalty.

6. In the result, impugned order is set-aside and appeal by the assessee is allowed.”

10. We have gone through the decision relied upon by the Id. AR of the assessee and find that there is force in the argument advanced by the Id. AR of the assessee and considering the following finding of the Co-ordinate

Bench in the case as relied upon. We delete the levy of penalty of Rs. 20,000/-.

In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 11/04/2023.

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 11/04/2023

*Ganesh Kumar

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Anshu Sharma, Jaipur
2. प्रत्यर्थी / The Respondent- Income Tax Officer, Ward 1(3), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 73/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar