

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. 146/JP/2023  
निर्धारण वर्ष / Assessment Years : 2015-16

Amar Bharti B 402, Knox Plaza Near Mind Space, Off link Road, Malad West, Mumbai	बनाम Vs.	Asstt. Commissioner of Income-tax, Ward-1(3), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAPPB 4234 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri K. L. Moolchandani, ITP  
राजस्व की ओर से / Revenue by : Smt Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 26/04/2023  
उदघोषणा की तारीख / Date of Pronouncement : 03/05/2023

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 07/02/2023 [here in after (NFAC)/ Id. CIT(A) ] for assessment year 2015-16 which in turn arise from the order of the penalty dated 12.06.2018 passed u/s. 271(1)(b) of the Income Tax Act [ here in after referred to as `Act' ] by the Income Tax Officer, Ward 1(3), Jaipur.

2. The assessee has marched this appeal on the following grounds:-

“1. On facts and in the circumstances of the case the ‘Authorities Below’ have grossly erred in imposing and confirming the penalty of Rs. 10,000/- u/s 271(1)(b) of the Act ignoring the fact that the Hon’ble ITAT had already deleted a penalty earlier imposed for the same default. On date it is a settled Law that no penalty is livable for the same default repeatedly.

2. On facts and in the circumstances of the case the ‘Authorities Below’ have grossly erred in imposing and confirming the penalty of Rs. 10,000/- u/s 271(1)(b) of the Act ignoring the fact that the Hon’ble ITAT had already deleted a penalty earlier imposed for the same default. On date it is a settled Law that no penalty is livable for the same default repeatedly.

3. The appellant craves to add, amend or withdraw any of the ground of appeal either before or at the time of hearing of appeal.”

3. The fact as culled out from the records is that the assessee filed his return of income on 30.09.2015 for the assessment year 2015-16 declaring total income of Rs. 8,84,710/- electronically. The case was selected for limited scrutiny by CASS. Accordingly, notice u/s 143(2) of the IT. Act, 1961 was issued on 21.09.2016 and served upon the assessee through speed post and e-mail. In compliance to notice the assessee filed his audit report P & L account on 27.02.2017. The assessee derives income from business of wholesale of mobile phone. The case has been selected through CASS for the purpose of ‘Limited Scrutiny’ reasons for scrutiny selection. The assessment was completed u/s. 143(3) of the Act but since the assessee has made default in the

reply to the various notices issued by the Id. AO he has also initiated penalty proceeding u/s. 271(1)(b) of the Act. The default made by the assessee as listed in the assessment order is reproduced here in below:

1.	Notice U/s.142(1)	21.09.2017	26.09.2017	Not Complied
1.	Notice U/s.142(1)	13.02.2017	21.02.2017	Not Compliance but copy of Audit report file on 27.02.2017
1.	Notice U/s.142(1)	16.06.2017	28.06.2017	Not Complied
1.	Notice U/s.142(1)	29.09.2017	06.07.2017	Not Complied
1.	Notice U/s.142(1)	07.07.2017	17.07.2017	Not Complied
1.	Notice U/s.142(1)	18.07.2017	26.07.2017	Not Complied
1.	Notice U/s.142(1)	27.07.2017	10.08.2017	Not Complied
1.	Notice U/s.142(1)	04.09.2017	11.09.2017	On 06.09.2017 Part reply received
1.	Notice U/s.142(1)	06.09.2017	19.09.2017	Not Complied
1.	Notice U/s.142(1)	21.09.2017	28.09.2017	Not Complied
1.	Notice U/s.142(1)	16.10.2017	23.10.2017	Not Complied
1.	Show cause notice U/s.142(1)	02.11.2017	08.11.2017	Not Complied
1.	Notice U/s.142(1)	24.11.2017	27.11.2017	Not Complied

On account of these defaults made by the assessee there already levy of penalty vide order dated 07.12.2017. There is an another

order levying penalty of Rs. 10,000/- u/s. 271(1)(b) dated 12.06.2018.

4. Aggrieved from the order of levying the penalty assessee preferred an appeal before the Id. CIT(A). The appeal of the assessee was disposed off by the National Faceless Appeal Centre (NFAC) vide order dated 07.02.2023. The relevant finding of the Id. NFAC on the issue is reiterated here in below:

"8. I have gone through the grounds of appeal, submissions filed by the appellant and order u/s. 271(1)(b) of the I.T. Act, 1961 passed by the Assessing Officer. The only issue regarding levy of penalty u/s. 271(1)(b) of the Act. During the course of assessment proceedings the A.Q. has service notice u/s.142(1) of the LT. Act. Subsequently, notices u/s. 142(1) on various dated as per para 4 of this order, were served upon the assessee through Speed Post as well as through Notice Server. The appellant remains silent and not attended the scrutiny proceedings which are evident from the record.

Reliance is placed in the case of Yamu Industries Ltd. Vs CIT [2008] 167 Taxmann 67 (Delhi), the hon'ble High Court of Delhi held that "Section 282 of the Income-tax Act, 1961 - Service of notice - General - Whether where notice under section 142(1) sent by registered post at correct address of assessee had not been received back 'unserved' within period of thirty days of its issuance, there was a presumption under law that said notice had been duly served upon assessee within period of limitation".

Further in the case of Vins Overseas India Ltd. Vs CIT [2007] 165 taxmann 95 (Delhi), the hon'ble High Court of Delhi held that "Section 143 of the Income- tax Act, 1961 - Assessment Issue of notice Assessment year 1997-98. Whether presumption that notice has been served upon assessee is rebuttable Held, yes Assessee for first time filed affidavit before Tribunal in which assessee denied receipt of notice issued under section 142(1) and contended that assessment framed under section 143(3) was without jurisdiction - Tribunal relying upon affidavit held that assessee by filing affidavit rebutted presumption of service of notice and assessment framed was without jurisdiction Whether Tribunal erred in placing reliance upon affidavit filed rather

belatedly only before it, to come to conclusion that assessee had successfully rebutted presumption"

In the case of Regency Express Builders (P.) Ltd Vs CIT [2007] 161 taxmann 1 (Delhi), the hon'ble High Court of Delhi held that" Section 143 of the Income-tax Act. 1961-Assessment - Issue of notice - Assessment year 1999-2000-Whether service of notice under section 142(1) to employee of assessee within limitation is valid service specially when assessee raises no objection before Assessing Officer and participates in proceeding".

In the case of Prakash V. Sanghvi Vs DDIT(inv) [2015] 64 taxmann.com 221(Karnataka), the hon'ble High Court of Karnataka held that "Where search of assessee's residential premises resulted into seizure of huge cash and panchanama was drawn, Authorized Officer was not barred from going to house of assessee and served notice on him to depose at said residence; it could not be said that Authorized Officer had trespassed into house of assessee and he deserved to be prosecuted".

Looking the facts and circumstances of the case, the action of the A.O in levying penalty u/s. 271(1)(b) of the Act is upheld. Hence, the appeal is dismissed.

9. In result, the appeal of the appellant is dismissed."

5. As the assessee did not find any favour from the order of the Id. CIT(A) the assessee has preferred this appeal before this tribunal. To support the grounds of appeal so raised by the assessee the Id. AR appearing on behalf of the assessee has placed their written submission which is extracted in below;

"The present appeal relates to the penalty of Rs.10,000/- imposed u/s 271(1)(b) of the Act on 12.6.2018 (imposed for second time) and confirmed by the H'ble NFAC (Herein after referred as Appeal Centre) Delhi on 7.2.2023. As mentioned in the Penalty Order, the penalty was imposed for the alleged defaults u/s 142(1) of the Act committed on various dates' (without specifying the particular default committed on a particular date or dates). Earlier also, a penalty of Rs.10,000/- was imposed u/s 271(1)(b) of the Act on 7.12.2017 on account of the same

default u/s 142(1) allegedly committed on various dates (without specifying the default on a particular date or dates). Copy of both the penalty orders is submitted herewith for ready reference and record Placed at (Page Nos.1 -3 of P.B.). From the perusal of such penalty orders it is noted that the penalty proceedings were initiated u/s 271(1)(b) of the Act in mechanical manner without specifying the defaults committed on particular dates. In absence of mention of specific default no valid penalty can be legally imposed u/s 271(1)(b) of the Act. However, the Authorities Below had erred in imposing and confirming the said penalty without appreciating the facts of the case in right perspective. Accordingly. the penalty so imposed and confirmed by the Authorities Below is assailed on the following counts:

(i) At the out-set, it may be pointed out that the penalty proceedings u/s 271(1)(b) of the Act were initiated in mechanical manner without specifying the particular notice and the date for which the appellant had failed to make the compliance. Thus the penalty proceedings being initiated in a mechanical manner do not hold good.

(ii) As evident from the assessment proceedings and the assessment order, it is not a case of 'non-compliance' of the various notices issued u/s 142(1) of the Act but it is a case of 'delayed compliance' of these notices. Because of change in address, the impugned notices u/s 142(1) did not reach the appellant timely; causing bona-fide and honest delay in making compliance of these notices in time.

(iii) Again it is an undisputed and un-denying fact that due to change of address, the impugned notices did not reach the appellant in time. In the circumstances, the appellant was prevented by reasonable cause from making compliance of the impugned notices issued u/s 142(1) of the Act within the meaning of section 273B of the Act. The Authorities Below however did not dwell upon this contention of the appellant and no finding what-so-ever was given on this point. However it is an undisputed fact that the alleged default was not an 'intentional' default within the meaning of section 271(1)(b) of the Act; warranting any penalty proceedings u/s 271(1)(b) of the Act as per intendment of the Legislature defined and interpretation by Judicial Authorities on this point.

(iv) In the Appeal Order, the H'ble Appeal Centre had emphasized upon the validity of the 'service' of the impugned notices u/s 142(1) of the Act by relying upon number of judicial citations. In this regard, it would be relevant to point out that the appellant had never questioned the validity

of the service of the impugned notices. From day one, it had been contended that due to change in address, the appellant did not receive the notices in time resulting in delay in making the compliance. Thus the plea taken by the honorable Appeal Centre for dismissing the appeal is not well founded. The same deserves to be quashed in limine.

(v) Lastly, it is a settled Law on date that only one penalty shall be imposed in respect of the repeated defaults of the same nature. In this case a penalty of Rs.10,000/- stood already imposed u/s 271(1)(b) of the Act on 7.12.2017 which was subjected to appeal. And finally, the said penalty was deleted by the honorable ITAT, Jaipur Bench, Jaipur vide appeal order No.888/JP/2018 dated 18.9.2018 (copy enclosed for ready reference Placed at Page Nos. 10 of P.B.). For the purpose, we rely upon the judgment of honorable ITAT, Jaipur Bench, Jaipur in the case of Sh. Sandeep Verma, Ghaziabad vs ITO, Ward-2(3), Alwar in ITA No.1167/JP/2019 dated 9.1.2020. Thus on this count also no valid penalty is leviable in this case. Thus the penalty of Rs.10,000/- as levied u/s 271(1)(b) of the Act deserves to be deleted summarily, Submitted”

6. On the other hand, the Id. DR has submitted that the Assessing Officer has levied the penalty vide impugned order for non-compliance of the notices issued u/s 142(1) of the Act various dates for the various dates of hearing. Therefore, there is no bar for initiation of penalty proceedings and imposing the penalty for non-compliance of statutory notices even prior to the assessment order is passed by the Assessing Officer. He has relied upon the orders of the authorities below.

7. We have heard the rival contentions and persuaded the material available on record made available by both the parties. The bench noted that the Id. AO has already passed the penalty

order u/s 271(1)(b) of the Act dated 07.12.2017 which was already disputed till tribunal and the tribunal vide its order dated disposed the appeal of the assessee for the same defaults. The relevant finding of the tribunal is as under:

“5. We have considered the rival submissions as well as the relevant material on record. The Assessing Officer passed the impugned order u/s 271(1)(b) of the Act on 07/12/2017 as under:-

PENALTY ORDER UNDER SECTION 271(1)(B) OF THE IT ACT, 1961

During the Assessment proceeding, on account of assessee's failure to comply with the statutory notice issued U/s 142(1) on various dates the hearing was fixed for 28.09.2017. On the appointed date, neither anybody attended nor any written reply was furnished. On the said date also, there was no response from the assessee's side. This goes to show that the assessee has no explanation to offer in support of his defence. I am, therefore, satisfied that the assessee has failed to comply with the statutory notices issued without any reasonable course for such failure. I, therefore, impose a penalty of Rs. 10,000/- upon the assessee.”

Thus, it is clear that the impugned order was passed by the Assessing Officer prior to completion of the assessment and for non-compliance of statutory notices issued U/s 142(1) of the Act. However, we find that the Assessing Officer neither in the assessment order has initiated the penalty proceedings U/s 271(1)(b) of the Act nor any show cause notice was issued prior to the impugned order dated 07/12/2017 was passed U/s 271(1)(b) of the Act. The Assessing Officer, though, mentioned in the order that there are 13 notices issued by the Assessing Officer U/s 142(1) as well as 142(2) of the Act on various dates and some of the notices were issued after 28/09/2017 as on 16/10/2017, 02/11/2017 and 24/11/2017. Therefore, after the notice dated 21/09/2017, the Assessing Officer further issued three notices U/s 142(1) and 142(2) of the Act. At the time of passing of assessment order dated 21/12/2017, the Assessing Officer has finally stated at the end of the assessment order that the show cause U/s 271(1)(b) of the Act is separately issued for noncompliance of statutory notices. We further note that that the Assessing Officer has passed another order dated 12/06/2018 U/s 271(1)(b)

of the Act for non-compliance of notice issued U/s 142(1) of the Act on various dates as mentioned in the said notice as under:

1.	Notice U/a 142(1)	21/09/2017	26/09/2017	Not complied
2.	Notice U/a 142(1)	13/02/2017	21/02/2017	Not compliance but copy of audit report file on 27/02/2017
3.	Notice U/a 142(1)	16/06/2017	28/06/2017	Not complied
4.	Notice U/a 142(1)	29/06/2017	06/07/2017	Not complied
5.	Notice U/a 142(1)	07/07/2017	17/07/2017	Not complied
6.	Notice U/a 142(1)	18/07/2017	26/07/2017	Not complied
7.	Notice U/a 142(1)	27/07/2017	10/08/2017	Not complied
8.	Notice U/a 142(1)	04/09/2017	11/09/2017	On 06/09/2017 Part reply received
9.	Notice U/a 142(1)	06/09/2017	19/09/2017	Not complied
10.	Notice U/a 142(1)	21/09/2017	28/09/2017	Not complied
11.	Notice U/a 142(1)	16/10/2017	23/10/2017	Not complied
12.	Show cause notice U/s 142(1)	02/11/2017	08/11/2017	Not complied
13.	Notice U/a 142(1)	24/11/2017	27/11/2017	Not complied

Thus a second penalty order U/s 271(1)(b) of the Act was passed on 12/06/2018 on account of non-compliance of the 13 notices issued U/s 142(1) including the notice U/s 142(1) of the Act dated 21/09/2017. The Assessing Officer initiated the penalty proceedings U/s 271(1)(b) of the Act by issuing notice dated 21/12/2017. Therefore, prior to notice dated 21/12/2017, there was no show cause notice issued by the Assessing Officer U/s 271(1)(b) of the Act. Further the second order passed by the Assessing Officer U/s 271(1)(b) of the Act dated 12/06/2018 was against the consolidated default by the assessee for non-compliance of all the statutory notices including the notice U/s 142(1) dated 21/09/2017. Hence, it is evident from the record that the impugned order dated 07/12/2017 was passed by the Assessing Officer without initiation of penalty proceedings and without issuing any show cause notice U/s 271(1)(b) of the Act. The only show cause notice was issued by the Assessing Officer was dated 21/12/2017 which was subsequent to the impugned order passed U/s 271(1)(b) of the Act. Further when the Assessing Officer has again passed a penalty order for non-compliance of the notices including the notice dated 21/09/2017 then the impugned order passed by the Assessing Officer without initiation of penalty proceedings is illegal and void ab-initio. Accordingly, we quash the impugned order dated 07/12/2017 passed U/s 271(1)(b) of the Act.”

The bench noted from the above finding of the tribunal that the assessee has already passed the proceeding u/s. 271(1)(b) of the Act vide order dated 07.12.2017 there cannot be a second round of the penalty for the same defaults. Based on these set of facts we quash the levy of the penalty vide order dated 12.06.2018.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 03/05/2023

Sd/-

( संदीप गोसाई )

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

( राठौड कमलेश जयंतभाई )

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03/05/2023

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Sh. Amar Bharti, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Ward-1(3), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 146/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar