

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.76/SRT/2023

Assessment Year: (2017-18)

(Physical Hearing)

Dipakkumar Ashvinbhai Bhendadia, Super Agency, Opp. Jaideep Cinema, Chikhli, Navsari, Gujarat – 396521.	Vs.	The ITO, Ward-2, Navsari.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AJWPB7944H		
(Appellant)		(Respondent)

Appellant by	Ms Chaitali Shah, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	03/05/2023
Date of Pronouncement	15/05/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Surat [in short “the Id. CIT(A)”], National Faceless Appeal Centre (in short ‘NFAC’), which in turn arises out of a penalty order passed by the Assessing Officer under section 272A(1)(d) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. Grounds of appeal raised by the assessee are as follows:

*“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing Officer in levying penalty of Rs.10,000/- u/s 272A(1)(d) of the I.T. Act, 1961.*

*2. It is therefore prayed that the above penalty levied by assessing officer and confirmed by Commissioner of Income Tax (Appeals) may please be deleted.*

*3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

3. Succinct facts *qua* the issue are that assessee’s case was selected under scrutiny and notices u/s. 142(1) of the Act, were issued to the assessee, which

were not complied with by the assessee. The Notices u/s 142(1) of the Act were issued on 30.05.2019, 07.09.2019, 10.11.2019 and 05.12.2019. The assessee responded on 15.12.2019 stating that he had not received any notice as mentioned. However, the Assessing Officer verified from the ITBA and found that notices were delivered at email provided in the return of the income. Therefore, assessing officer held that nothing has been explained by the assessee as to why he did not comply with the notices issued under section 142(1) of the Act. The assessee has, without reasonable cause, failed to comply with the notices issued under section 142(1) of the Act and also failed to properly explain the reason for doing so. Hence assessing officer held that assessee has committed default under section 272A(1)(d) of the I.T. Act and therefore, imposed a penalty of Rs.10,000/-.

4. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the action of the Assessing Officer. Aggrieved by the order of Ld. CIT(A), the assessee is in further appeal before us.

5. Learned Counsel for the assessee submitted that notices of hearing were not delivered on the physical address given by the assessee. The Ld. Counsel submitted that assessee has changed the address and intimated the Assessing Officer vide Acknowledgement No. 227594861260121 (see paper book page no.8), therefore, Ld. Counsel contended that assessee has intimated to the Department through e-mail id (vide paper book page no.7). However, despite of this, the Department sent the notices on the old e-mail id, therefore notices of hearings were not received by the assessee. The Ld Counsel stated that assessee has proved the *bonafide* and reasonable cause, hence penalty should not be levied on the assessee.

6. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

7. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that Assessing Officer has imposed the penalty under section 272A(1)(d) of the Income Tax Act which is in respect of failure to answer questions, sign statements, furnish information, return or statements and allow inspection etc. The Clause (d) of sub-section (1) of Section 272A states that if any person 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 Rs.10,000/- for each such default or failure.

8. We note that assessee couldn't comply with the notices issued to him in the assessment proceedings, as the assessee didn't received any notices from AO neither by physically nor through email, as the notices were sent by assessing officer on the assessee's old email -id and not on new address. The assessee has changed the address and intimated the changed address to the Assessing Officer vide Acknowledgement No. 227594861260121, hence there is no mistake on the part of the assessee. Hence, it can be concluded that assessee has reasonable cause for not complying with notices issued in the course of assessment proceedings therefore penalty should not be imposed. Therefore, we delete the penalty of Rs.10000/-.

9. In the result, appeal filed by the assessee is allowed.

Order is pronounced on 15/05/2023 in the open court.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Sd/-  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

सूरत /Surat

दिनांक/ Date: 15/05/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee

2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

**// TRUE COPY //**

Assistant Registrar/Sr. PS/PS  
ITAT, Surat