

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D": NEW DELHI**

**BEFORE**

**SHRI G.S. PANNU, HON'BLE PRESIDENT  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 2608/Del/2022

Asstt. Year: 2012-13

Jatinder Kumar Ahuja Apartment 508, Abraj AI Lulu Silver Tower Building No. 1803 Road No. 5133 Block No. 351 Seef, Kingdom of Bahrain. PAN AGOPA4593Q	Vs.	DCIT, International Taxation Circle, Gurugram
(Appellant)		(Respondent)

Assessee by:	Shri Sameer Kapoor, CA
Department by:	Shri Sanjay Kumar, Sr. DR
Date of Hearing:	01.05.2023
Date of pronouncement:	26.05.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 21.09.2022 of the Ld. Commissioner of Income Tax (Appeals) - 43, New Delhi ("**CIT(A)**") whereby he confirmed the penalty of Rs. 10,000/- levied by the Ld. Assessing Officer ("**AO**") under section 271(1)(b) of the Income Tax Act, 1961 (**the "Act"**) for Assessment Year ("**AY**") 2012-13.

2. The Ld. AO initiated the impugned penalty proceedings for failure by the assessee to comply with the notice under section 142(1) of the Act dated

05.12.2019. Hearing was fixed for 09.01.2020 requiring the assessee to show cause why penalty under section 271(1)(b) be not imposed. Neither the assessee attended nor any reply was filed. Final opportunity of hearing on 02.12.2020 was also availed. The Ld. AO came to the conclusion that the assessee has nothing to say in the matter. He, therefore, imposed the impugned penalty.

3. On appeal filed by the assessee before the Ld. CIT(A), the assessee stated that he is non-resident, employed abroad and is hardly in India. Also the address available with the Ld. AO is of the previous employer and was left by the assessee in the year 2008. Certificate of the previous employer was submitted. The address with the Ld. AO was of the accommodation provided by the previous employer. Certificate from the UAE new employer was also filed. It was explained that the assessee could not receive the notices sent manually by the Ld. AO at the old address. The assessee was therefore prevented to comply with the notices under the circumstances beyond his control. It was urged that the impugned penalty be deleted.

4. Since additional evidence was sought to be admitted, the Ld. CIT(A) obtained the remand report from the Ld. AO who objected to the admittance of additional evidence stating, inter alia that the assessee had received notice under section 142(1) of the Act through his father. In the light of the remand report, the Ld. CIT(A) confirmed the impugned penalty. This has brought the assessee before the Tribunal.

5. We have heard the Ld. Representative of the parties and perused the records. The facts are not in dispute that the assessee is a non-resident, employed abroad and is hardly in India. Nonetheless the assessee placed on record e-mail correspondence which shows that the assessee replied to the notice issued by the Ld. AO. Therefore, it is not a case of non-cooperation with the Department. We are, therefore, of the view that it is not a fit case for imposition of the impugned penalty which we hereby cancel.

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

**Order pronounced in the open court on 26<sup>th</sup> May, 2023.**

**Sd/-  
(G.S. PANNU)  
PRESIDENT**

**sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

Dated: 26/05/2023

**Veena**

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

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Date on which the typed draft is placed before the Other Member	
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Date on which the fair order is placed before the Dictating Member for pronouncement	
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