

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "H" NEW DELHI

BEFORE SHRI G. S. PANNU, PRESIDENT

AND

SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं .I.T.A No. 6258/Del/2019  
निर्धारण वर्ष/Assessment Year: 2010-11

Shri Vineet Kumar, H-48, West Patel Nagar, Delhi-110 008.	<u>बनाम</u> Vs.	Income Tax Officer, Ward : 50 (1) New Delhi.
PAN No. ANVPK9076G		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे / Assessee by :	Shri V. Rajkumar, Adv.;
राजस्वकीओरसे / Department by :	Shri M. Baranwal, Sr. D.R.; & Shri Sanjay Kumar, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	21.04.2023
उद्घोषणाकीतारीख/Pronouncement on :	29.05.2023

आदेश / ORDER

PER C. N. PRASAD, J.M.

1. This appeal is filed by the assessee against the order of the ld. Commissioner of Income Tax (Appeals)-17 [hereinafter

referred to CIT (Appeals)] New Delhi, dated 29.05.2019 for assessment year 2010-11.

2. The assessee has raised the following substantive ground of appeal:-

“On the facts and in the circumstances of the case and in law the ld. CIT (Appeals) erred in confirming the penalty imposed by the Assessing Officer under section 271(1)(b) of the Income Tax Act, 1961 to the extent of Rs.40,000/-.”

3. The ld. Counsel for the assessee submits that the statutory notices mentioned above were never served on the assessee; that the father of the assessee was severely sick; that the father of the assessee eventually passed away at the relevant time; and that due to the absence of the assessee from the premises the notices issued by the AO remained unserved on him and so the assessee had no knowledge of the fixation. Considering the explanation as stated above the Ld. CIT (Appeals) reduced the penalty to Rs.40,000/- instead of Rs.50,000/- as originally imposed by the AO vide his order dated 26.06.2018.

4. The Ld. Counsel submits that Ld. CIT (Appeals) observed that "Section 273B does provide that penalty is not to be imposed if the assessee has reasonable cause for non-compliance." Thus, even according to the Ld. CIT (Appeals), if there was a reasonable cause for non-compliance, there would be room u/s 273B of the Act not to impose any penalty. The Ld. CIT (Appeals) observed in para 6.6 of the impugned order that "I find that the assessee has failed to explain the reasons for non-compliance" which observation is

apparently wrong because in the order at para 6.3 the causes cited by the assessee for non-compliance are duly reproduced by the Ld. CIT (Appeals) herself which all seem to have been ignored by her subsequently while passing the order.

5. The ld. Counsel further submits that in view of the fact that the Ld. CIT (Appeals) has omitted to note the reasonable cause as pleaded before her and has confirmed the penalty by observing that assessee has failed to explain the reason for non-compliance, the order of the Ld. CIT (Appeals) is apparently misdirected and wrong. That apart the non-receipt of notices being an adequate cause for non-compliance which the Ld. CIT (Appeals) has failed to recognise, the further fact of the preoccupation of the assessee in attending to his ailing father with the eventual demise of his father are all further facts constituting sufficient cause for condoning the penalty which has been missed out by the Ld. CIT (Appeals). It was submitted that the ground as raised be allowed and the penalty of Rs.40,000/- imposed u/s 271(1)(b) of the Act be deleted.

6. The ld. Counsel for the assessee placed a paper book containing written submissions before the ld. CIT (Appeals) and death certificate together with medical documents and also relied on the decision of the co-ordinate bench of the Tribunal in the case of Harvinder Singh Jaggi Vs. ACIT [(2014) 48 taxmann.com 121 (Delhi-Trib)].

7. On the other hand, the ld. DR relied on the orders of the authorities below.

8. Heard rival submissions perused the orders of the authorities below. We observe that the Assessing Officer in the penalty order given the summary of statutory notices issued and compliance thereof as under:-

S.No.	Date	Description of Notice	Date of hearing	Remarks.
1.	11.07.2017	u/s 142(1)	20.07.2017	No compliance was made.
2.	08.09.2017	u/s 142(1)	15.09.2017	No compliance was made.
3.	11.10.2017	u/s 142(1)	17.10.2017	No compliance was made.
4.	07.11.2017	u/s 142(1) with final opportunity.	14.11.2017	No compliance was made.
5.	24.11.2017	u/s 142(1) along with show cause notice u/s 144.	30.11.2017	No compliance was made.

It is also observed by the Assessing Officer that there was no compliance on the date of hearing though notice was sent through Speed Post. However, it is observed that there is no finding by the Assessing Officer that any of the above notices was served on the assessee and the assessee did not comply. Even before us no evidence was furnished by the Revenue suggesting that the above notices were in fact served on the assessee and there was no compliance by assessee. The submission of the assessee that he was attending to his ailing father and no notice was served on him as he was not residing in the premises cannot be brushed aside in view of the death certificate of his father who passed away on 22.02.2018

and medical reports dated 18.05.2017 and 09.08.2017. All this goes to show that there is reasonable cause for non-compliance of the above notices even assuming they were served. In the circumstances we hold that this not a fit case for levy of penalty under section 271(1)(b) of the Act and direct the Assessing Officer to delete the penalty. The ground raised by the assessee is allowed.

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

Order pronounced in the open court on : 29/05/2023.

Sd/-  
( G. S. PANNU )  
PRESIDENT

Sd/-  
( C. N. PRASAD )  
JUDICIAL MEMBER

Dated : 29/05/2023

*\*MEHTA\**

Copy forwarded to :

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	22.05.2023
Date on which the typed draft is placed before the dictating member	23.05.2023

Date on which the typed draft is placed before the other member	29.05.2023
Date on which the approved draft comes to the Sr. PS/ PS	29.05.2023
Date on which the fair order is placed before the dictating member for pronouncement	29.05.2023
Date on which the fair order comes back to the Sr. PS/ PS	29.05.2023
Date on which the final order is uploaded on the website	<del>29.05.2023</del>
Date on which the file goes to the Bench Clerk	29.05.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	