

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 1377/DEL/2023
[Assessment Year: 2017-18]

Bijender Lather, H. No. 5/6, Railway Colony, Gohana Distt. Sonipat.	<u>Vs</u>	Income-tax Officer, Ward-1, Sonipat.
PAN-BCIPB3318M		
APPELLANT		RESPONDENT
Assessee represented by	None	
Department represented by	Shri Om Parkash	
Date of hearing	17.07.2023	
Date of pronouncement	21.07.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 15.03.2023, pertaining to the assessment year 2017-18. The assessee has raised following grounds of appeal:

“1. Learned CIT(A) has erred in law as well as on fact in confirming penalty of Rs. 20,000/- imposed by Ld. AO u/s 272A(1)(d) of the Act without

satisfying the condition of assigning plausible reasons to be given for rejection of the replies of the assessee.

2. Learned CIT(A) has erred in law as well as on fact in confirming penalty of Rs. 20,000/- imposed by Ld. AO u/s 272A(1)(d) of the Act, whereas the assessee had submitted its reply on all the points raised in questionnaire. The order of penalty is bad in law being against the principles of natural justice.”

2. Facts giving rise to the present appeal are that the assessee is an individual. In this case assessment order was completed u/s 144 of the Income-tax Act, 1961 (the “Act”) at the total income of Rs. 7,55,100/-. During the assessment proceedings the Assessing Officer initiated penalty proceedings for non-compliance of the statutory notices. Thereafter the AO imposed a penalty of Rs. 20,000/- for non-compliance of the notices dated 14.03.2018 and 23.08.2018. Against the penalty order the assessee preferred appeal before learned CIT(Appeals). The learned CIT(Appeals) dismissed the appeal. Aggrieved against this the assessee is in appeal before this Tribunal.

3. At the time of hearing no one attended the proceedings. It is seen from the records that the assessee has not attended the proceedings. However, written submissions have been made. For the sake of clarity the submissions of the assessee are reproduced as under:

“It is submitted that the assessing officer initiated penalty proceeding u/s 272A(1)(d) of the Act for failure to comply with notice u/s 142(1). The Ld

AO did not mention the date of notice for which penalty was initiated. The AO mentioned "notice" means only one notice. The AO NFAC had added notices of dated 14.03.2018 and notice dated 23.08.2019. It is pertinent to mention here that notice under section 142(1) dated 14.03.2018 was never received by the assessee by any means of communication – ITBA is not the means of communication. Further all the reply to the questionnaire were submitted by the assessee before AO on 19.09.2019. Again it is submitted notice u/s 142(1) dated 23.08.2019 was not received by the assessee. The AOP has considered the reply of the assessee dated 19.09.2019 and allow the relief to the assessee in respect of Rs. 700000 deposited in the bank account against KCC loan on 15.11.2016 on account of fist deposit and not allowed deposit of Rs. 100000 on 15.11.2016 on the same day in the another KCC loan account and Rs. 450000 on 24.11.2016 on 24.11.2016 sin the third KCC Loan account. The reply submitted by the assessee was complete with Cass flow statement but the AO had made the addition of Rs. 564000 on the plea that the amounts were deposited on second go. Finally addition was deleted by the hon'ble SMC Bench of the ITAT vide order dated 23.02.2023. the AO Faceless Assessment Centre had made its own default of two notices without intimation of penalty and imposed penalty of Rs. 20000/- upon the assessee without satisfying the condition of assigning plausible reasons to be given for rejection of the replies of the assessee. Hence the order of penalty is invalid and without jurisdiction.

In reference to the above ground of appeal, it is duly submitted that the assessee has no taxable income, in order to be liable to comply to the obligation of filing of return of income u/s 139(1) of the Income Tax Act, 1961, for the A.Y. 2017-18, as the assessee already submitted his reply with cash flow statement and supportive documents complying to the notice given by the Ld. AO, during the time of assessment and before the CIT(A) during the hearing of penalty appeal. The assessee duly proved his stand as the amount deposited in the bank account were not his undisclosed income, rather the cash receipts available with the assessee on account of sale of agriculture products at the time of demonetization, which was deposited by the assessee in KCC loan account, and were duly explained in the cash flow statement.

It is clarified the fact that the assessee's income was below taxable limit therefore it is prayed before your honor the penalty imposed by the Ld. AO may kindly be deleted on the basis of the order of the Hon'ble ITAT, New Delhi and dated 23.02.2023. (Copy enclosed).

4. The learned DR opposed the submissions and supported the orders of the authorities below.

5. I have heard the learned and perused the material available on record. The assessee has pointed out that in quantum proceedings this Tribunal was pleased to delete the addition in ITA No. 1738/Del/2022. However, learned DR submitted that the penalty has been levied for non-compliance of the statutory notices, therefore, deletion of addition would not absolve the assessee from penal liabilities on account of non-compliance of the statutory notices. It is seen from the record that in response to the penalty notice the assessee had filed certain explanation before the Assessing Authority. However, the Assessing Authority did not consider the same. In my considered view the penalty u/s 271A(1)(d) is not automatic. If the assessee could show the reasonable cause for non-compliance, in that event the AO should not levy the penalty. It is the contention of the assessee that AO through National Faceless Assessment Centre had issued notice dated 14.03.2018 and 23.08.2019 but the same were not received by the assessee. The Assessing Officer has not assigned any reason for not accepting the contention of the assessee. Therefore, considering the totality of the facts and material available on record, I am of the considered view that it is not a fit case for levy of penalty. I, therefore, direct the AO to delete the penalty. Grounds raised in this appeal are allowed.

6. Appeal of the assessee is allowed.

Order pronounced in open court on 21st July, 2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**