

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं./ITA Nos.216, 217 & 218/RPR/2022

(निर्धारण वर्ष / Assessment Years: 1993-94, 1994-95 & 1995-96)

Sh. Santosh Jain, Opp. P.N. Tiwari, Gandhi Chowk, Durg	Vs	Income Tax Officer-1(1), Bhilai
PAN No. : AFYPJ6194D		

(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से / Assessee by	:	Sh. R. B. Doshi, CA
राजस्व की ओर से / Revenue by	:	Sh. Satya Prakash Sharma, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	20.07.2023
घोषणा की तारीख/Date of Pronouncement	:	20.07.2023

आदेश / ORDER

Per Arun Khodpia, AM :

These appeals were filed by the same assessee for assessment years 1993-94, 1994-95 and 1995-96 against separate orders of learned Commissioner of Income Tax (Appeals)-NFAC, Delhi, each dated 21.09.2022.

2. The grounds of appeal raised by the assessee in all the assessment years are common, therefore, the grounds of appeal raised in ITA No. 216/RPR/2022 for the assessment year 1993-94, treating the same as a leading case, are reproduced as under:

1. *Ld. CIT(A) erred in confirming penalty of Rs. 25,000/- levied by AO u/s 271 A, without appreciating the facts of the case properly. The penalty- levied by AO and confirmed by CIT(A) is arbitrary and not justified.*
2. *Without prejudice to ground no. 1, the penalty confirmed by Ld. CIT(A) is illegal inasmuch as the penalty order- passed by the AO was barred by limitation. The penalty order is liable to be quashed.*

3. *The appellant reserves the right to add, amend or modify any of the ground/s of appeal.*

2. Briefly stated, the issue involved in all these three appeals was pertaining to penalty under section 271A of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') levied on the assessee observing that the assessee has deliberately failed to maintain, keep or retain books of account. On perusal of the order of learned Assessing Officer (AO), it is observed that the assessee remained non-compliant during the proceedings under section 147 of the Act. The assessment proceedings were completed by the AO under section 144 read with section 147 of the Act. It was the observation of learned AO that as a matter of abundant precaution, for non-maintenance of account books under section 44AA of the Act, penalty proceedings under section 271A are also initiated because neither books of account, nor account statements were produced by the assessee during the assessment proceedings. Subsequently, penalty order under section 271A of the Act was passed on 27.07.2015. As per the penalty order, the assessee has submitted his written submissions on 25.09.2003 and 20.01.2004 to keep the penalty proceedings in abeyance till the disposal of the appeals. However, show-cause notice dated 05.10.2005 and 06.07.2015 fixing the case for hearing could not be serviced upon the assessee as the assessee shifted from Bhilai. On second occasion also, the assessee was not found on the address, therefore, the notice could not be served upon, with such observations, learned AO in absence of any response from the assessee has imposed penalty of Rs.25,000/- under section 271A of the Act.

3. Aggrieved with this order, the assessee filed appeals before the learned CIT(A)-NFAC. But again, the assessee was non-responsive. On several occasions when the notice for hearing issued, a chart showing such conduct of the assessee was reproduce by learned CIT(A) in his order, wherein on five occasions the assessee was served with notice, but there was no response by the appellant assessee. Therefore, learned CIT(A) has dismissed the appeal of the assessee for non-prosecution. Dissatisfied with the findings of the learned CIT(A), now the assessee is before us to agitate that the levy of penalty under section 271A by the AO and confirmed by the learned CIT(A) is arbitrary and not justified.

4. We have heard the Authorized Representatives of both the parties and perused the relevant materials available on record. Aggrieved with the order of learned CIT(A)-NFAC, the assessee has contested the issue before us. However, since the assessee was non-compliant or non-responsive before the learned CIT(A), the issue was not discussed, deliberated and decided on merits by learned CIT(A). Under such facts and circumstances, since the issue was not decided on merits by learned CIT(A), we deem it fit to restore the matter back to the file of learned CIT(A) for adjudicating the same afresh considering the facts of the case and in accordance with law. Needless to mention, the assessee, who remained non-compliant before the Assessing Officer as well as before the learned CIT(A), on request, in the interest principle of natural justice, is allowed to submit all the necessary details, evidences or submissions to assist learned CIT(A) in adjudicating the matter lawfully.

5. Since, ITA No. 216/RPR/2022 is decided in terms of our observations hereinbefore, the same ratio of decision would be applicable in the identical appeals in ITA Nos. 217 & 218/RPR/2022, having same facts and circumstances. Accordingly, ITA Nos. 217 & 218/RPR/2022 are also remitted back to the file of learned CIT(A) for fresh adjudication of the issue pertaining to levy of penalty under section 271A.

5. In the result, all the three appeals, i.e., ITA Nos. 216, 217 & 218/RPR/2022 of the assessee are allowed for statistical purposes, in terms of our observations hereinabove.

Order pronounced in the open court on 20/07/ 2023.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 20/07/2023

RK/-, Sr. P.S.(on tour)

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur