

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.66/Ind/2023
Assessment Year: 2017-18

Shri Ankit Khandelwal, 06, Shubham Palace Colony, Chhota Bangarda, Indore.	<u>बनाम/</u> Vs.	Assessing Officer, National Faceless Assessment Centre, Delhi
(Assessee / Appellant)		(Revenue / Respondent)
PAN: BFEPK1890J		
Assessee by	Shri Soumya Bumb, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.07.2023	
Date of Pronouncement	25.07.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 03.01.2023 passed by Commissioner of Income-tax (Appeal), National Faceless Appeal Centre, Delhi ["CIT(A)"], arising out of penalty-order dated 15.01.2022 passed u/s 272A(1)(d) by National Faceless Assessment Centre, Delhi, for assessment-year ["AY"] 2017-18, the assessee has filed this appeal.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. In this appeal, the assessee is aggrieved by the penalty of Rs. 30,000/- imposed by Ld. AO u/s 272A(1)(d) for non-compliance of three statutory notices dated 18.07.2019, 06.08.2019 and 20.11.2019 issued by AO u/s 142(1) during assessment-proceedings.

4. Ld. AR for assessee submits that the impugned notices were sent by Department/AO through e-mail to the registered ID of the previous counsel of assessee and the department/AO has not served any notice through physical mode. Ld. AR submitted that at the relevant time when those notice were sent during the year 2019, the Department adopted the Faceless Assessment/E-Assessment and hence stopped sending physical notices to assessees. But the year 2019 was initial period of on-line interface and many of the assessees were not aware and made non-compliance. To illustrate this, Ld. AR filed copy of one such case of ITAT, Mumbai in Triumph International Finance India Limited Vs. DCIT, ITA No. 1870/Mum/2020, order dated 10.03.2022 wherein the assessee committed similar default due to initial phase of introduction of online systems by department. Having said so, Ld. AR submitted that the case of assessee is very well covered by section 273B which provides that no penalty shall be imposed u/s 272A(1)(d) if the failure has occurred due to a reasonable cause. Ld. AR submitted that initial phase of on-line interface adopted by department coupled with service upon the ID of previous counsel of assessee

and no service in physical mode to assessee, constitutes a reasonable cause for non-compliance of the notices. Therefore, the assessee should be given benefit of Section 273B and should be exonerated from penalty.

5. Ld. DR for the revenue left the matter to the wisdom of the Bench although he strongly supported the penalty order.

6. We have considered the submissions made by both sides and also perused the orders of the lower authorities. It is true that the assessee has not made compliances of the notice issued by AO but at the same time, it is also true that the AO had issued notices in online mode only which is clearly borne out of Para No. 2 of assessment-order. Further, it is also a fact that in the initial period, the online systems were new and many of the citizens were not well versed with systems. Therefore, prima facie, it appears a case wherein the non-compliance is not attributable to any mala fide intention or deliberate non-cooperative attitude of assessee. Coupled with this, Ld. AR of assessee has submitted that the emails containing notices were sent to Registered I.D. of previous counsel. The assessee has made exactly same pleading before Ld. CIT(A) (Para No. 4 & 5 of order of first appeal) but the CIT(A) has turned down this submission of assessee with the reasoning that the said ID was provided by assessee himself to the Income Tax Department. The assessee is not arguing that he has not provided ID of his counsel; the assessee's stand is such that the notices sent by Department to that ID did not reach to him. Therefore, the case of assessee has to be seen from reasonability angle particularly when Section 273B itself relieves an assessee from levy of penalty and the said section has an over-riding effect. Since in the present appeal, the cause explained by assessee is reasonable, we are inclined to accept that the penalty should not be imposed upon assessee. Being so, we quash the penalty. The assessee succeeds in this appeal.

7. Before parting, we would like to mention that the relief given by us from levy of penalty on the basis of section 273B shall not have any adverse influence over quantum-appeal, if any, which may be pending at any forum against the assessment-order passed by AO u/s 144 of the Act. That appeal shall be decided independently by the adjudicating authority.

8. Resultantly, this appeal is allowed.

Order pronounced in the open court on 25/07/2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 25.07.2023

CPU/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*