

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 775/DEL/2023
Assessment Year: 2015-16**

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| M/s Rivet Electricals Pvt. Ltd., IPSO Legal, H-35, 1 st Floor, Jangpura Extn., New Delhi-110014. PAN- AAFCR8803C | <u>Vs</u> | Income-tax Officer, Ward-2(1), Faridabad. |
| APPELLANT | | RESPONDENT |
| Assessee represented by | Sh. Shyam Sundar, Adv. | |
| Department represented by | Sh. Vivek Vardhan, Sr. DR | |
| Date of hearing | 31.07.2023 | |
| Date of pronouncement | 31.07.2023 | |

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 24.01.2023, pertaining to the assessment year 2015-16. The assessee has raised following grounds of appeal:

“1. That the Ld. CIT(A), NFAC has erred in law as well as on facts in dismissing the appeal of the assessee and confirming the penalty of Rs. 10,000/- u/s 271(1)(b) of the Act.

2. That the Ld. CIT(A), NFAC has erred in law as well as on facts in not considering the fact that no notice u/s 142(1) of the Act was served to the assessee.

The above grounds of appeals are independent of and without prejudice to each other.

That the appellant craves leave to add, alter, amend or withdraw all or any grounds herein or add any further grounds as may be considered necessary either before or during the hearing of these grounds.”

2. The only effective ground raised in this appeal is against levy of penalty of Rs. 10,000/- u/s 271(1)(b) of the Income-tax Act, 1961 (the “Act”).

3. Facts giving rise to the present appeal are that in this case assessee filed its return of income declaring total income of Rs. 1,78,430/-. The case was taken up for scrutiny assessment. Thereafter assessment was completed u/s 143(3) of the Act vide order dated 12.04.2017. However, the assessment was cancelled by the learned Pr. CIT and the assessment was restored to the file of learned AO. While framing the remanded assessment, the AO issued a notice dated 6.8.2021. There

was no compliance of the notice, hence the AO issued a notice u/s 271(1)(b) of the Act and thereafter after imposed penalty of Rs. 10,000/-. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who sustained the penalty. Now the assessee is in appeal before this Tribunal.

4. At the outset learned counsel for the assessee submitted that owing to Covid-19 situation the compliance could not be made. He further reiterated the submissions as made in the brief synopsis. For the sake of clarity the brief synopsis is reproduced as under:

“The captioned appeal relates to levy of penalty of Rs. 10,000/- u/s 271 (1)(b) of the Income Tax Act, 1961 and is fixed for hearing today i.e., 31st of July’ 2023 before the Hon’ble Bench.

2. That the instant appeal was filed by assessee before the Hon’ble Tribunal on 21.03.2023 against the order dated 24.01.2023 passed under section 250 of the Income Tax Act, 1961 by National Faceless Appeal Centre (NFAC). Delhi. The Ld. CIT (A)/(NFAC) confirmed the penalty order u/s. 271(1)(b) of IT Act, 1961 in respect of the penalty levied by the National Faceless Assessment Centre on account of non-compliance of notice dated 06.08.2021 issued u/s. 142(1) of the IT Act. The brief facts and submission of the assessee are as hereunder: -

3. It is submitted that the fresh assessment proceedings assessment in the above case was completed ex-parte u/s 144/263/144B of the IT Act 1961 on 24.09.2021 by the Ld. Additional/Joint/Deputy/Assistant Commissioner of Income Tax, Income Tax Department, National Faceless Assessment Centre, Delhi

3.1 It is submitted that the original assessment proceedings was completed u/s 143(3) of the Act on 12.04.2017, accepting the return of income at Rs. 1,78,430/-. Later, Pr. CIT, Faridabad held the assessment order to be erroneous and prejudicial to the interest of the revenue, thereby cancelling the order. The Ld. Pr. CIT passed the revision order u/s 263 on 28.08.2019. During the fresh assessment proceedings, a notice u/s 142(1)

was issued on 06.08.2021. However, this notice was not served physically and therefore could not be complied as the counsel who was assisting at assessment stage could not appear due to illness in COVID-19 pandemic, when the whole country was suffering. Hon'ble SC also excluded this period from 15.3.2020 to 14.3.2022 in counting the period of limitation. Levying of the penalty in respect of non-compliance of notice dated 06.08.2021 (during the second wave of Covid-19 pandemic) is wholly unwarranted in law as there was a reasonable cause for non compliance of such notice. It is submitted that non compliance of the notice was on account of bonafide reasons and hence it is submitted penalty levied for non compliance of notice dated 06.08.2021 is unsustainable in law.

4. It is submitted that the assessee has filed appeal on 02.03.2022 against the order passed u/s. 271 (1)(b) dated 12.01.2022 raising the following grounds of appeal:

1. That the Ld.AO has erred in law as well as on facts in levying the penalty of Rs. 10,000/- u/s 271(l)(h) of the IT Act, 1961

2. That the Ld.AO has erred in law and on facts in passing the order ex-parte u/s 144 without providing reasonable and sufficient opportunity to the assessee. Hence, the order as framed is bad in law

3. That in view of the matter in quantum assessment order was passed u/s 143(3) of the Act, after making due compliance. Hence, the penalty imposed is not correct and liable to be deleted

The above grounds of appeal are independent of and without prejudice to each other

That the appellant craves leave to add, alter, amend or withdraw all or any grounds herein or add any further grounds as may be considered necessary either before or during the hearing of these grounds.

5.1 It is submitted that the during the course of appellate proceeding the appellant has filed written submissions dated 21.09.2022 and 25.10.2022 in response to notice against the penalty u/s. 250 dated 06.09.2022 and 14.10.2022.

6. It is submitted that the Id. CIT(A)/(NFAC), Delhi order was passed u/s. 250 dated 24.01.2023. The Id. CIT(A) was considering the written

submission filed by assessee at pg. 3 to 7 of the CIT(A) Order. The final decision concluded by the Id. CIT (A)/NFAC order in para 6 to 6.1 at page no. 7 to 12 and also at pg. 9 to 10 and 12 of the CIT(A) Order. The Id. CIT(A)/NFAC has ignored the facts of appellant case without even considering it and passed the order.

7. *It is submitted that the appellant has filed appeal on 21.03.2023 against the order dated 24.01.2023 u/s. 250 of the IT Act, 1961 raising the following grounds of appeal as under:*

1. *That the Id CIT(A). NFAC has erred in law as well as on facts in dismissing the appeal of the assessee and confirming the penalty of Rs. 10,000/- u/s 271(l)(b) of the Act.*

2. *That the Ld. CIT(A), NFAC has erred in law as well as on facts in not considering the fact that no notice u/s 142(1) of the Act was served to the assessee.*

The above grounds of appeals are independent of and without prejudice to each other.

That the appellant craves leave to add, alter, amend or withdraw all or any grounds herein or add any further grounds as may be considered necessary either before or during the hearing of these grounds.”

5. Learned DR opposed the above submissions and supported the orders of the authorities below.

6. We have heard rival submissions and perused the material available on record. For the reasons stated in the brief synopsis we are of the considered view that there was reasonable cause for non compliance of the notice issued by the AO.

We, therefore, direct the AO to delete the penalty levied u/s 271(1)(b) of the Act.

Grounds of appeal are allowed.

7. Appeal of the assessee is allowed.

Order pronounced in open court on 31st July, 2023.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

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