

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "D" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Sandeep Singh Karhail (JM)

I.T.A. No. 1680/Mum/2023 (A.Y. 2018-19)

Deal Depot Brokerage Pvt. Ltd. 904, Stock Exchange Tower Dalal Street, Fort Mumbai-400 001. PAN : AACCD7266N (Appellant)	Vs.	ITO 4(1)(1) 636, Aayakar Bhavan M.K. Road Mumbai-20. (Respondent)
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Assessee by	Shri D.C. Jain
Department by	Smt. Mahita Nair
Date of Hearing	31.07.2023
Date of Pronouncement	31.07.2023

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 14.3.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi for A.Y. 2018-19 confirming the penalty of Rs. 10,000/- levied by the Assessing Officer under section 272A(1)(d) of the I.T. Act.

2. The assessment in the hands of the assessee was completed by the Assessing Officer to the best of his judgement under section 144 of the Act, since the assessee did not respond to the notice issued by him. However, it is pertinent to note that the Assessing Officer has accepted the return of income filed by the assessee without making any addition. The assessment was completed on 27.10.2020.

3. Subsequently the Assessing Officer initiated the penalty proceedings under section 272A(1)(d) of the Act for not complying with the notice dated 20.7.2020 issued by him under section 142(1) of the Act. Before the

Assessing Officer the assessee submitted that the notice was received in registered e-mail, but email could not be checked in view of pandemic prevailing at that point of time and lockdown/restrictions announced by the Government in March 2020. The Assessing Officer was not convinced with the explanations of the assessee and accordingly levied penalty of Rs. 10,000/- under section 272A(1)(d) of the Act. In the appellate proceedings the learned CIT(A) dismissed the appeal of the assessee holding that the assessee did not respond to the notice issued by him. Aggrieved, the assessee has filed this appeal before the Tribunal.

4. Learned AR submitted that the notice under section 142(1) was issued by the Assessing Officer during the period of lockdown. Further, due to restrictions imposed by the Government, the office of the assessee/representative was not functioning properly. Hence, the assessee could not respond to the notices issued by the Assessing Officer. The Learned AR submitted that the Assessing Officer has accepted the total income returned by the assessee, i.e., the AO did not make any addition to the returned income while completing the assessment. The Learned AR further submitted that the assessee had filed written submissions before the learned CIT(A) in response to the notice dated 5.12.2022 issued by him. However, the learned CIT(A) did not consider written submissions filed by the assessee and did not even refer to the above said notice in his order. Accordingly, the learned AR submitted that there was reasonable cause for the assessee in not responding to the notice issued by the Assessing Officer under section 142(1) of the Act and accordingly prayed for the deletion of the penalty.

5. The Learned DR, on the contrary, supported the order passed by the learned CIT(A) and submitted that the assessee did not properly represent before the learned CIT(A).

6. Having heard the rival submissions, we are of the view that there was reasonable cause for the assessee in not responding to the notices under section 142(1) of the Act issued by the Assessing Officer, i.e., the notice was issued during the period of pandemic and consequential lockdown announced by the Government. In that period, most of the offices were not functioning regularly. In our view the above said explanation of the assessee constitutes reasonable cause in terms of section 273B of the Act. We also noticed that the learned CIT(A) has not considered reply filed by the assessee in response to the notice dated 5.12.2022 issued by him.

8. Hence, on a conspectus of the matter, we are of the view that the Assessing Officer was not justified in levying penalty under section 272A(1)(d) of the Act. Accordingly, we set aside the order passed by the learned CIT(A) and direct the Assessing Officer to delete the impugned penalty.

9. In the result, appeal filed by the assessee is allowed.

Pronounced in the open court on 31.7.2023.

Sd/-
(Sandeep Singh Karhail)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 31/07/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS