

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM &
SHRI N. K. CHOUDHRY, JM**

I.T.A. No. 1093/Mum/2023

And

I.T.A. No. 1350/Mum/2023

(Assessment Years:
2017-18 & 2016-17)

**Balkrishana Dhondiram
Thorwat,**
AL4/13/08 Virat Apartment,
Sector-16, Airoli,
Thane-400708
PAN No. **ADFPT8888H**

Vs.

ITO, Ward-27(1)(2),
Room No. 413, 4th Floor, Tower
No.6, Vashi Railway Station
Commercial Complex,
Navi Mumbai-400703.

Appellant)

:

Respondent)

**Appellant by
Respondent by**

:

:

Sh. Abhishek Samdani , Ld. CA
Sh. Ashok Kumar Ambastha,
Ld. Sr. DR

**Date of Hearing
Date of Pronouncement**

:

:

03.07.2023 / 11.07.2023
18.07.2023

O R D E R

Per N. K. Choudhry, JM:

The Assessee/Appellant herein has preferred these appeals against the orders dated 09-02-2023 and 24.03.2023 impugned herein passed by National Faceless Appeal Centre (NFAC), Delhi {in short 'Ld. Commissioner'} u/s 250 of the Income Tax Act 1961 (in short 'Act').

2. As the issue and facts involved in both the appeal are common except variations in dates, therefore for brevity we are inclined to decide the same simultaneously and will quote the issue and facts as involved in I.T.A. No. 1093/Mum/2023 for determination and result of the same shall be applicable to both the appeals.

3. I.T.A. No. 1093/Mum/2023

In this case, the case of the Assessee was re-opened under section 147 of the Act and in pursuance to that a notice under section 148 of the Act was served digitally upon the Assessee on 31.03.2021, whereby the Assessee was asked to file his ITR within 30 days of the reply of the notice. However, the Assessee failed to comply with the notice within stipulated time and therefore, notice under section 142(1) of the Act was also issued on dated 11.11.2021 which was duly served upon the Assessee digitally, whereby the Assessee was again asked to furnish details/information/documents qua assessment proceedings by 26.11.2021, which also remained un-complied with. Thereafter another notice dated 27.12.2021 under section 142(1) of the Act was also issued and served upon the Assessee, by which the Assessee was asked to furnish details/information/documents related to the assessment proceedings by 03.01.2022 which also remained un-complied with.

3.1 Somehow thereafter, the Assessee in response to the notice under section 148 of the Act, filed its return of income on dated 22.02.2022 and declared total income of Rs. 5,74,120/- thereby enhancing income by Rs. 1,30,190/- and lowering deductions under Chapter-VIA by Rs. 33,891/-.

4. Though the AO accepted the returned income of Rs. 5,75,120/- of the Assessee, as declared by filing its return of income in response to the notice under section 148 of the Act, however, initiated the penalty proceedings under section 271(1)(d) of the Act for non-compliance of the statutory notices dated 11.11.2021 and 27.12.2021.

5. Before the AO in the penalty proceedings though the Assessee by filing its reply dated 08.08.2022 claimed that during the pandemic period, he was a Covid-19 Warrior and therefore, failed to appear on each and every dates of hearing and/or failed to comply with the aforesaid notices. The AO though considered the said aspect, however found not acceptable on the reason that the Assessee has not furnished any supporting documents/evidences to prove the same. The AO ultimately levied the penalty of Rs. 20,000/- (Rs. 10,000/- for each non-compliance).

6. The Ld. Commissioner more or less on the same reasoning affirmed the levy of penalty.

7. We have given thoughtful consideration to the peculiar facts and circumstances of the case and observe that the notices dated 11.11.2021 and 27.12.2021 were sent to the Assessee on its e-mail during the Covid-19 period which remained un-complied with. It is a fact that vide assessment order dated 27.03.2022 under section 147 r.w.s 144B of the Act, the AO has duly accepted the return of income filed by the Assessee, in response to the notice under section 148 of the Act and also accepted the income declared to the tune of Rs. 5,74,120/- by the Assessee and therefore in our considered view though the Assessee has made default by non-complying the notices under consideration, however no malafide intention or malice can be attributed until and unless the special circumstances exists, which are not appearing in this case.

7.1 In the provisions of section 271(1)(b) of the Act discretion has been vested with the authority to direct the Assessee to pay by way of penalty and it is also well settled that the discretion is required to be exercised in a reasonable and judicious manner and thus in our considered view considering the peculiar facts that the Assessee was an Government employee and period when notices under consideration issued, was pandemic period and even the returned income has been accepted as it is by the AO, the penalty under consideration is un-sustainable, consequently, the same is deleted and the appeal filed by the Assessee is allowed.

8. In the result both the appeals filed by the Assessee stands allowed.

Orders pronounced in the open court on 18-07-2023.

Sd/-
(PRASHANT MAHARISHI)
Accountant Member
SK, Sr.PS.

Sd/-
(N. K. CHOUDHRY)
Judicial Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai