

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, JODHPUR
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER
ITA No. 25/JODH/2023
(A.Y: 2016-17)

Prakash Chand Modi D-128, Shastrinagar, Jodhpur-342003, Rajasthan.	Vs.	ACIT, Cir-1, Jodhpur, Rajasthan.
RPAN/GIR No. : ADQPM6554J		
Appellant	..	Respondent

Assessee by :	Shri Amit Kothari, CA
Revenue by :	Ms. Nidhi Nair, JCIT -DR

Date of Hearing	14.08.2023
Date of Pronouncement	17.08.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the order of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/s 250 of the Act. The assessee has raised the following grounds of appeal:

1. *The Id. CIT(A) has erred in upholding the order passed by Id. AO u/s 271(1)(b). The order so made is bad in law and bad on facts and is contrary to the principles of natural justice.*
2. *The Id. CIT(A), has erred in confirming penalty under section 271(1)(b) amounting Rs 10,000 which is bad in law and bad on facts.*

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4 The appellant craves leave to add, alter, amend or vary from the above the above grounds of appeal at or before the time of hearing.

2. The brief facts of the case are that the assessee was issued notice U/sec 142(1) of the Act in the assessee proceedings and there was no compliance. And the A.O has initiated penalty proceedings and levied a penalty of Rs,10,000/- and passed the order u/s 271(1)(b) of the Act dated 11-10-2018.

3. Aggrieved by the penalty order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the ex parte order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer overlooking the submissions made in the assessment proceedings. Further the assessee has a good

case on merits and shall substantiate with the material evidences and prayed for an opportunity to explain before the lower authorities. Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing referred at Page 2 Para 4 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the levy of penalty by the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate the case with

evidences and information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal. And the grounds of appeal of the assessee are allowed for statistical purposes.

6. In the result, the appeal filed by assessee is allowed for statistical purposes.

Order pronounced in the open court on 17.08.2023.

Sd/-

(DR DIPAK P RIPOTE)

ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)

JUDICIAL MEMBER

Jodhpur Dated 17.08.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Jodhpur
6. Guard file.

आदेशानुसार/ BY ORDER,