

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. 26/Jodh/2023

(A.Y: 2011-12)

Manish Kumar Mali 31/306, Shivaji Mohalla Nehru Road, Bhilwara-311001, Rajasthan.	Vs.	ITO, Ward-5, Bhilwara, Rajasthan.
PAN/GIR No. : AWCPM2698A		
Appellant	..	Respondent

Assessee by :	None
Revenue by :	Ms. Prerana Choudhary, JCIT DR

Date of Hearing	16.08.2023
Date of Pronouncement	16.08.2023

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/sec 271B and 250 of the Act. The assessee has raised the following grounds of appeal:

1. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the penalty order passed by the AO under section 271B of the Act.*

2. The brief facts of the case are that the assessee is engaged in the business and the assessee has not filed the return of income u/s 139(1) of the Act for the A.Y 2011-12. The AO after recording the reasons found that there is income escaping the assessment of Rs.13,85,200/- and issued notice u/s 148 of the Act. In compliance to the notice, the assessee has filed the return of income disclosing a total income of Rs.60,000/- on 31.10.2018. Subsequently the notice u/s 143(2) and 142(1) of the Act was issued. In compliance, the Ld. AR of the assessee appeared from time to time and submitted the details. Subsequently the AO also issued various notices calling for the information, whereas the AO found that the assessee has not complied with the notices and further the assessee could not disclose the source of cash deposits in the bank account and therefore the AO has made an addition U/sec69A of the Act of Rs. 14,72,754/- and assessed the total income of Rs.15,32,750/- and passed the order u/s 143(3) r.w.s147 of the Act dated 22.12.2018.

3. Subsequently the AO has initiated penalty proceedings u/s 271B of the Act for failure to get Accounts Audited U/sec44AB of the Act. The A.O has dealt on the facts, information of the scrutiny assessment and in spite of issuing the penalty notices on various dates there is no compliances and the reasonable cause was not explained and

finally the AO has levied a penalty of Rs.1,50,000/- and passed the order u/s 271B of the Act. Dated 15-06-2019.

4. 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, and the findings the AO. Since there is no compliance to the notices issued. Finally CIT(A) has dismissed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing ,none appeared on behalf of the assessee and the Ld. DR supported the order of the CIT(A).

6. We heard the Ld.DR 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 levy of penalty by the assessing officer. The Ld. CIT(A) has issued the notices of hearing referred at Page 2 Para 5 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

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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.

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

Order pronounced in the open court on 16.08.2023.

Sd/-

(DR DIPAK P RIPOTE)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Jodhpur Dated 16.08.2023

KRK, PS