

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'H' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.1854/Mum/2023
(Assessment Year :2017-18)**

Shri Hemant Manmohan Panchamiya 102, Silver Leaf Off University Road Model Colony Pune-411 016	Vs.	Addl/ Joint/ Deputy/ ACIT/ITO/National E- Assessment Centre, Delhi
PAN/GIR No.AABPP6358D		
(Appellant)	..	(Respondent)

Assessee by	Ms. Simran Dhawan
Revenue by	Shri Prakash Kishinchandani
Date of Hearing	22/08/2023
Date of Pronouncement	29/08/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 23/03/2023 passed by NFAC in relation to the penalty proceedings u/s. 272A(1)(d) for A.Y.2017-18.

2. The assessee is aggrieved by levy of penalty of Rs.10,000/- u/s. 272A(1)(d) for non-compliance of notice u/s.142(1) on the date fixed by the ld. AO.

3. The brief facts are that the assessee is an individual who has filed his return of income on 29/07/2017 declaring total income of Rs.89,35,950/-. The assessee's case was selected for scrutiny and accordingly, notices u/s. 143(2) and 142(1) was issued. In response to all the notices, assessee had filed his replies on e-portal and accordingly, the assessment has been completed u/s. 143(3) vide order dated 28/12/2019. During the course of assessment proceedings, ld. AO had issued a notice u/s. 142(1) dated 06/11/2019 to file certain details on the date fixed therein, i.e., on 11/11/2019. However, on the said date, assessee could not file reply and the same was submitted on 17/12/2019 which is an admitted fact and all the details required were furnished. Not only that, assessee had filed further replies on 19/12/2019 and on 26/12/2019. Thus, technically, there was no non-compliance of notice dated 06/11/2019, albeit there was delay in making compliance to the notice. The ld. AO based on these details only has passed an assessment order u/s. 143(3).

4. Now, the penalty has been levied by the ld. AO for non-compliance of notice u/s. 142(1) on the appointed date in the said notice. In the show-cause notice, assessee submitted that due to some unavoidable circumstances and reasons beyond control, the details could not be furnished on the said date but he has filed subsequently before the ld. AO and not only that all the other notices and replies were complied with within time and despite that ld. AO has levied the penalty of Rs.10,000/-. Even the ld. CIT (A) in his *exparte* order has confirmed the penalty.

5. Before us ld. Counsel drew our attention to all the replies and notices which were filed during the course of assessment proceedings and submitted that there has been no non-compliance of any of the notices and all the notices were duly complied with and all the details were furnished. Since the details were furnished slightly belatedly in response to one notice u/s. 142(1) dated 06/11/2019, that does not lead to any penal consequence and non-compliance of the notice. Thus, she submitted that penalty levied should be deleted.

5. On the other hand, ld. DR strongly relied upon the order of the ld. AO and ld. CIT (A) and submitted that the provisions u/s.271A(1)(d) have to be strictly adhere to.

6. After considering the relevant findings given in the impugned orders as well as material placed on record, as noted above, we find that it is not in dispute that assessee did comply with all the notices including the notice dated 06/11/2019 and had furnished all the details as required in the said notices. However, the charge of the ld. AO is that date fixed for compliance of notice was 11/11/2019, whereas assessee had furnished the reply on a later date and not on the appointed date. The penalty u/s. 271A(1)(d) is leviable if any person fails to comply with the notice u/s.142(1) or 143(2) or direction issued u/s.142(2A). It does not provide that even if the details have been furnished and assessee has complied with the notice beyond date mentioned in the said notice will lead to levy of penalty under this Section. Thus, once assessee has complied

with the notice u/s. 142(1) and the said compliance has been accepted during the course of assessment proceedings, we do not find any reason in sustaining the penalty. Accordingly, the penalty of Rs.10,000/- levied u/s.271A(1)(d) is deleted.

7. In the result, appeal of the assessee is allowed.

Order pronounced on 29th August, 2023.

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER
Mumbai; Dated 29/08/2023
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai