

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 89/JPR/2023  
निर्धारण वर्ष / Assessment Years : 2011-12

Sakku Devi Indian Technology B3 Siddhi Vinayak Complex, Near Nagar Nigam Stadium Guru Gorakh Colony Snganer, Jaipur.	बनाम Vs.	Income Tax Officer Ward-7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: EPLPD 0233 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Yogesh Kumar Sharma (Adv.)  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 25/05/2023  
उदघोषणा की तारीख / Date of Pronouncement : 22 /08/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This is an appeal filed by the assessee against the order of the Id. CIT(A) dated 31-12-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as "NFAC"] for the assessment year 2011-12 in the matter of Section 271(1)(b) of the Income Tax Act, 1961 wherein the assessee has raised the following grounds:-

*"1. That the appellant is illiterate rural lady and she is house wife only. She is living at Bhoyan, Tehsil-chaksu, Jaipur Rajasthan. She don't know the proceeding of the Income tax act. That appellant is the not the part of Hindu Undivided family of parents' home due to her marriage. During the considering year, on 11/11/2010 all the family members of parents' home had sold their ancestral agricultural land situated at Patwar Muhana, tehsil sangnaer, Jaipur Khasra No. 1078, 1083, 1084, 1085, 1087, 1088, 1089, 1090 1161, 1162, 1163 and 1164 in the consideration of Rs. 4,04,0,9,600/- to Mr. Prahlad Agarwal and others. Hence she is not connected with the assessment proceeding of the said property and appellant is not liable to pay any penalty.*

*2. That on the facts and in the circumstances of the case and in law the learned appellate authority erred in passing the Appellate order dt. 31.12.2022 and in accordance to the Assessment order points whereas the Ld. Appellant authority has not considered the Grounds and facts as mentioned in the Form 35.*

*3. That the Ld. Assessing Officer has also stated that the assessee has not made complianceto the Notice/ show cause notice issued u/s. 271(1)(b). However, that cannot be a ground for imposition of penalty u/s. 271(1)(b) of the Act. On the one hand, the Assessing Officer has given the date of compliances in the in the form of table in penalty order whereas the penalty was imposed on the ground that the above notices were not complied by the assessee. Further, the Assessing Officer has also stated that the assessee has not made compliance to the show cause notice issued u/s. 271(1)(b). However, that cannot be a ground for imposition of penalty u/s. 271(1)(b) of the Act. As per the judgment"Gyan Mata Radha Satyam Kriyayog Ashram Research Institute VS ITO (ITAT Allahabad) 2021."*

*4. That the statutory notice was not served to the correct address, penalty under section 271(1)(b) of the Income Tax Act cannot be levied alleging the non-compliance of the statutory notices. The statutory notice are issued in a casual and mechanical manner.*

*The Assessing Authority has not verified the records placed before it and ensure the statutory notice is served on the current address of the appellant. On reliance of the judgment of "Simple Singh Vs ITO (ITAT Delhi) 2023"*

*5. That the appellant in this sale deed, was only involved as a confirming party, who confirm the sale without any making claim on the sold agricultural land. In other words, it was only a declaration that" I confirm to this sell of agricultural land and I will not desire any suit/claim/share in respect of the sold agricultural land against the seller or purchaser being a sister of seller/part of the family as daughter/sister. While I got marriage and I had no interest in this property being a monetary terms. "That being a sister/Daughter, the appellant had put my signature on the sale deed without any expectation of single rupees. Moreover, Neither appellant have received earlier any consideration or payment against such sold agricultural land, nor at the time of sale of the property from the seller or purchaser. The above confirmation was without cost and without benefit. Hence she is not connected with the assessment proceeding of the said property and appellant is not liable to pay any.*

*6. That the appellant pleaded vehemently of no reasonable opportunity having been provided by the Ld assessing officer at the time of imposing of penalty.*

*7. That the order of the Ld assessing officer is arbitrary, against the facts and circumstances of the case, illegal and be therefore quashed outright."*

*8. That the appellant prays for leave to add, alter, and amend the aforesaid grounds of appeal at or before the time of hearing of appeal."*

2.1 Apropos grounds of appeal of the assessee, the facts as emerges from the order of the ld. CIT(A) are as under:-

‘4. Appellate decision:-

“I have given careful consideration to the facts of the case, contention of the appellant, grounds of appeal and the penalty order and find that as the appellant has failed to show sufficient cause as to why penalty u/s 271(1)(b) of the Act, 1961 for non compliance of notice u/s 142(1) of the Act should not be levied, it clearly emerges that the appellant has no respect of law and the authorities under the IT Act. The reply furnished by the assessee is considered and the explanation given by her is not found to be acceptable, as penalty proceeding u/s 271(1)(b) is distinct from the issue involved in quantum appeal. It is seen from the penalty order u/s 271(1)(b) of the IT Act that the AO has issued various notice u/s 142(1) of the Act dated 30.09.2018 and show cause notice dated 08.04.2019 during the course of assessment proceedings and a show cause notice dated 08.04.2019 during the course of penalty proceedings but the assessee has not replied to any of the notices issued to him during the course of assessment as well as penalty proceedings. During the appellate proceedings also the appellant has failed to furnish any reasonable cause for non compliance to statutory notices u/s 142(1) of the IT Act issued by the AO. Under these circumstances, I am satisfied that penalty u/s 271(1)(b) of the IT Act, 1961 must be levied in this case. The AO has rightly imposed the penalty of Rs 10,000/- for default of notice u/s 142 (1) and I also confirm the penalty levied u/s 271(1)(b) of the IT Act, 1961. Thus, the ground of appeal is dismissed.”

2.2 During the course of hearing, the ld AR of the assessee prayed that the AO has passed ex-parte assessment order dated 31-10-2018 without providing adequate opportunity of being heard to the assessee and further submitted that a penalty order dated 23-

04-2019 was also passed by the AO, Ward 7(2), Jaipur u/s 271(1)(b) of the Act imposing penalty of Rs.10,000/- which was confirmed by the ld. CIT(A) vide its order dated 31-12-2022.

2.3 On the other hand, the ld. DR supported the order of the ld. CIT(A) who sustained the penalty of Rs.10,000/- us 271(1)(b) of the Act.

2.4 We have heard both the parties and perused the materials available on record. The crux of the issue is that the assessee being an illiterate rural lady who is living at Bhoyan Tehsil-Chaksu, Jaipur (Raj) could not pursue her case before the lower authorities and simultaneously she could not comply with the notices issued to her being not received at her correct address. It indicates that the assessee remained deprived off to contest the case before the lower authorities. The object of the Bench is to provide justice to the assessee but in this case it appears that the assessee was deprived off to contest the case before the lower authorities being not receipt of notices at the correct address concerning in her case. In similar type of case, the ITAT ‘G’ Bench, New Delhi in ITA No. 1367/Del/2022 dated 5-01-2023 in the case of Simple Singh vs ITO Ward 1(2)(5), Meerut has allowed the appeal of the assessee

in the matter of penalty levied u/s 271(1)(b) of the Act amounting to Rs.10,000/- by observing as under:-

“9. It is not disputed by the Revenue that the notice was sent on the address given in the income tax return filed by the assessee. Therefore, it cannot be inferred that the assessee had not provided the correct address to the Assessing Authority. Looking to the totality of the facts and circumstances of the case, we are of the considered view that the assessing authority ought to have served notices at the correct address as mentioned in the income tax return. The statutory notice should not be issued in a casual and mechanical manner. The Assessing Authority should verify the records placed before it and ensure the statutory notice is served on the current address of the assessee. Looking to the facts of the present case in our considered view, the AO was not justified in levying of the impugned penalty. We, therefore, direct the AO to delete the penalty amounting to Rs.10,000/ levied u/s 271(1)(b) of the Act. Thus, grounds raised by the assessee are allowed.

Since the issue raised by the assessee is similar to the case of Simple Singh vs ITO, Ward 1(2)(5), Meerut, (supra) we, therefore, respectfully following order of ITAT Delhi Bench, allow the

appeal of the assessee by deleting the penalty of Rs.10,000/- made u/s 271(1)(b) of the Act. Thus the appeal of the assessee is allowed.

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

Order pronounced in the open Court on 22 /08/2023.

Sd/-

( राठोड कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-

(एस.सीतालक्ष्मी)  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 22 /08/2023.

**\*Mishra**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Sakku Devi, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-7(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 89/JPR/2023 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar