

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA

**BEFORE SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER**

**ITA No.780/KOL/2022
Assessment Year: 2013-14**

Prosanto Saha 60-A, Chakarberia Road (North), Bhawanipur, Kolkata-700020. PAN: ASRPS 2174 A (Appellant)	Vs.	ITO, Ward-11(3), Kolkata (Respondent)
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Present for:

Appellant by : Shri Amit Agarwal, Advocate
Respondent by : Shri Kallol Mistry, JCIT, Sr. DR

Date of Hearing : 06.09.2023

Date of Pronouncement : 08.09.2023

ORDER

PER SONJOY SARMA, JM:

This appeal of the assessee for the assessment year 2013-14 is directed against the order dated 22.07.2022 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the 'Id. CIT(A)']. The assessee has raised the following grounds of appeal:

- 1. That the learned Commissioner of Income Tax (Appeals) / NFAC was not justified in disposing off the appeal filed by the Appellant without providing adequate opportunity of hearing when adjournment application was filed and the appeal was instituted only on 26-03-2022 and the said appeal was disposed in a hurried manner on 22-07-2022, within a span of little over one hundred days.*
- 2. That the learned Commissioner of Income Tax (Appeals) / NFAC was not justified in disposing off the appeal filed by the Appellant without providing adequate opportunity of hearing when the assessment had been completed on the basis of disputed valuations of old, ancestral and litigated properties under consideration where the District Valuation Officer in a persistent manner had not provided the Valuation Reports and no action has been taken against that.*

3. That the learned Commissioner of Income Tax (Appeals) / NFAC was not justified in imposing a penalty of Rs 20,000/- u/s 271(1)(b) of the Income Tax Act, 1961 when the assessee was prevented by sufficient cause from making compliances owing to the prevailing second-wave of COVJD-19 in the country in the year 2021 and the ailing health condition of the Appellant himself, who is a senior citizen, out of COVID infection.

4. That the actions of the National Faceless Appeal Centre as well as the National Faceless Appeal Centre is, otherwise, perverse and violates the principles of natural justice.

5. The appellant craves leave to add, alter or abandon one or more grounds of appeal in the course of hearing of the appeal by the Hon'ble Bench."

2. At the outset, we find that there is a delay of 99 days in filing of the appeal by the assessee. We after perusing the petition for condonation of delay are convinced that the assessee was prevented by sufficient cause from filing the appeal in time and hence delay is condoned and appeal is admitted.

3. Brief facts of the case are that in the case of assessee the assessment order u/s 147 r.w.s, 144B was finalised on 02.11.2021. During the assessment proceeding notices u/s 142(1) were issued on various dates to the assessee, however the assessee failed to comply with the notices issued by the AO. Consequent to that, the ld. AO issued notice u/s 271(1)(b) of the Act by which asking the assessee to appear before him, by stating that why an order imposing penalty u/s 271(1)(b) of the Act should not be passed. However, in turn no response was received from the assessee and the ld. AO ultimately passed an order u/s 271(1)(b) of the Act vide order dated 14.02.2020 by levying penalty of Rs. 20,000/- on the assessee as the assessee became defaulter due to non-compliance of notice u/s 142(1) of the Act.

4. Aggrieved by the above order, assessee preferred an appeal before the Id. CIT(A) by raising various grounds of appeal and filed his written submission in support of his claim which is reproduced hereunder:

“4.1 During the course of appellate proceedings, submission have been uploaded in ITBA portal by the assessee on behalf of the appellant. Arguments have been mentioned in the statement of facts and Grounds of Appeal in Form No.35. The relevant, portion of the appellant’s submission as mentioned in the statement of facts are reproduced as under:

“1. The Appellant is an individual and derives income from other sources in the form of interest. He also earns income in the form of commission from a marketplace at Hatibagan which has been inherited by him. During the year, he has also earned income from long term capital gain out of sale of a piece of ancestral land with temporary structure at Kolkata which had been owned by the Appellant jointly with other co-owners of the land.

*2. The only dispute *in the assessment year actually relates to determination of market-value of the family property which was sold by the Appellant during the financial year 2012-13,, relevant to the assessment year 2013-14, by way of a registered deed of conveyance executed on 16-10-2012 executed before the Additional District Sub-Registrar, Sealdah, Kolkata'. The Endorsement for Deed Number was 1-03446 of 2012 (Serial No.05507 of 2012).*

3. The property was situated at 116 Dr Lalmohan Bhattacharya Road, Kolkata : 700014 which was purchased under the occupancy of a tenant named M/s B. N. Chatterjee and Sons by the father of the Appellant (Sukdev Saha, since deceased) jointly with his uncles (Shib Shankar Saha and Gopal Krishna Saha) under separate deeds of conveyance executed in the year 1965. The Appellants father, was one third undivided owner of the property and the Appellant, along with his two brothers, was the undivided owner of one-ninth portion of the property. After purchase of property, an eviction suit was filed against the tenant in occupation there.'

4. The entire property was sold at a price of Rs 4.70 Crore and the Appellant had received one ninth share, Le, Rs 50,00,000/- for his one-ninth share. No tax was payable on this amount after indexation and hence no return was filed by the Appellant u/s 139(1) of the Act.

5. However, the matter surfaced through the Information System of the Income Tax Department and notice u/s 148 of the Act was issued on 27-03-2019. The return in response to the said notice was filed late on 05-11-2019. The assessment order was passed on 02-11-2021 by the National Faceless Assessment Centre after the valuation of the property being referred to Departmental Valuation Officer u/s 55A of the Act. The stamp duty value of the entire property was determined at 22.03 Crore (approx) and the value determined by the DVO was Rs. 18.07 Crore (approx). None of these authorities had considered the alienation of the property, by way of the occupied tenant and the pending litigations thereon. The valuation was done, as if, the property is a free hold one and they had arrived at an astronomical figure of market value which, in reality, was impossible to realize out of sale of the property.

6. After the issue of the notice u/s 14.8 of the Act, recorded reasons were supplied on 26-10-2021 and assessment was closed on 02-11-2021. Previously, owing to ailing health condition of the Appellant, who is a senior citizen, and restrictions on movement due to COVID pandemic, there had been some delay in compliance of notices. Though final compliances have all been done within the time barring dates, penalty for noncompliance has been imposed unnecessarily u/s 271(1)(b) of the Act.

7. Being aggrieved by such imposition of penalty in the impugned assessment order by the National Faceless Assessment Centre, the present appeal is being preferred. ”

5. However after considering various submissions filed by the assessee, the ld. CIT(A) uphold the order passed by the AO by dismissing the appeal of the assessee.

6. Feeling aggrieved by the order of ld. CIT(A), assessee is in appeal before us. The ld. AR in order to prove the fact that he brought to our notice towards the submission and details filed by the assessee before the ld. CIT(A) which was not considered by the ld. CIT(A) while passing the impugned order.

7. On the other hand, ld. DR strongly supported the order of ld. CIT(A) and there is no merit in the argument taken by the AR of

the assessee. He contended that the ld. AO has rightly taken a correct view by imposing penalty u/s 271(1)(b) of the Act and subsequently confirmed by the ld. CIT(A) against the appeal filed by the assessee.

8. We have heard both the parties and perused the material available on record and gone through the orders of the authorities below. The ld. AR of the assessee submitted that during the assessment proceeding, the ld. AO did not consider the fact that the assessee who is a senior citizen and due to the hardship caused by covid pandemic and restriction of movement there has been delay in compliance of notices issued by the AO. The ld. AR further contended that the assessee has not complied with the notices due to his ill health and various restrictions imposed by the authority during the covid pandemic. Therefore, the imposition of penalty u/s 271(1)(b) of the Act is uncalled for.

9. Further from the facts of the case, we find that assessee was served with the notices issued by the AO which was not complied by the assessee due to various pandemic restrictions imposed by the authority as stated by the ld. AR before us and the assessee was also suffering from illness during that period of time which the assessee has clearly stated before the ld. CIT(A) at the time of hearing of the matter, the plea taken by the assessee was never considered by the ld. CIT(A) while passing the impugned order simply by sustaining the order of AO. We find that the reason explained by the assessee were bona fide and reasonable cause before the ld. CIT(A) which was never taken into consideration while passing the impugned order. Therefore, we set aside the impugned order passed by the ld. CIT(A) and the penalty imposed

u/s 271(1)(b) of the Act by AO for non-compliance of section 142(1)
is hereby deleted.

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

Order pronounced in the open court on 08.09.2023

Sd/-

**(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata, Dated: 08.09.2023
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Prosanto Saha.
2. The Respondent: ITO, Ward-11(3), Kolkata.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata