

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.13/Jab/2022
(ASSESSMENT YEAR- 2010- 2011)**

Raj Kumar Khatik, Fresh Vegetable Commission Agent, Sabji Mandi, Sagar, Madhya Pradesh-470002.	vs	ITO, Ward-3, Sagar
(Appellant)		(Respondent)
PAN No. CEFPK7387R		

Assessee By	Shri Dhiraj Ghai, FCA
Revenue By	Shri Shiv Kumar, Sr.DR
Date of hearing	12/09/2023
Date of Pronouncement	20/09/2023

ORDER

PER OM PRAKASH KANT, A.M.:

The appeal by the assessee is directed against the order dated 13.12.2021 passed by Ld. Commissioner of Income Tax(Appeals)-National Falceless Appeal Centre, Delhi ["Ld.CIT(A)"] for assessment year 2010-11, in relation to penalty of Rs.10,000/- levied u/s 271(1)(b) of the Income Tax Act, 1961 ("the Act")for non-compliance of notice issued u/s 142(1)of the Act. The assessee has raised following grounds of appeal:-

1. *"On the facts and in the circumstances of the case the Id CIT(A) was not justified in confirming the penalty of 10,000/- imposed under section 271(1)(b) of the Act.*
2. *On the facts and in the circumstances of the case the Id CIT(A) was not justified in ignoring the fact that in spite of AO was not available in his office on date of hearing and assessee duly appeared in his office on due date and still confirming the penalty of 10,000/- imposed under section 271(1)(b) of the Act*
3. *On the facts and in the circumstances of the case the Id CIT(A) was not justified in ignoring the fact that AO was primarily the resident of Jabalpur and hardly used to be in Sagar office and still confirming the penalty of 10,000/- imposed under section 271(1)(b) of the Act.*
4. *The appellant craves leave to add or amend any ground of the appeal."*

2. We have heard Ld. Authorized Representatives of the parties on the issue in dispute and perused the material available on record. In the case of the assessee, more than Rs.25 lacs cash was deposited in saving account but no return of income was filed, so assessment was re-opened invoking provision of section 147 of the Act. During the course of re-assessment proceedings, the Assessing Officer ("AO") issued a notice u/s 142(1) of the Act alongwith questionnaire on 20.09.2017, fixing the case for hearing on 27.09.2017, but neither anyone appeared on behalf of the assessee nor was any compliance made till 19.10.2017.

Consequently, the AO issued a notice for levying penalty u/s 271(1)(b) of the Act for non-compliance of the notice dated 20.09.2017. The notice sent for levying penalty u/s 271(1)(c) of the Act, also remained non-complied and therefore, the AO levied penalty of Rs.10,000/- vide his order dated 18.05.2018. Before Ld.CIT(A), the assessee submitted that on the date of hearing, the assessee attended the office of the AO and remained throughout the day but the AO was not available in the office. The Ld.CIT(A) however, rejected the contention of the assessee by observing as under:-

5. *“I have considered the facts of the case, As per the Assessing Officer, the date of hearing were 27.09.2017, 25.10.2017 & 16.05.2018. The assessee or his A/R did not attend the hearing for which the notice was issued, nor any written submission filed.*

The appellant claims that he was present on 27.09.2017 in day time but could not meet the Assessing Officer. The appellant has not submitted any documentary evidence to prove his claim. On the contrary he has raised serious allegations at point 1(v) of his submission which have no bearing on the present matter of non attendance.

Assessee has failed to prove that the Assessing Officer was not present in his office when he attended for hearing. Whether he contacted any supervisory officer or staff or got his

attendance marked or submitted his written reply on the date, is not supported by any evidence.

After considering the facts and submissions of the appellant, I consider that there is no substance in the claim raised by the appellant. The appellant must have acted seriously in attending and complying with the statutory notices and thus cooperating with the proceedings.

The Ground of appeal 1&2 are therefore disallowed. Appeal is dismissed.”

3. Before us, Ld. Counsel for the assessee has filed an affidavit and alleged that authorised representative of the assessee Shri G.S. Khanna, Advocate, attended before the AO on 27.09.2017. Relevant part of the said affidavit is reproduced as under:-

1. यह कि, वकालत मेरा पेशा है।
2. यह कि, आयकर अधिकारी सागर श्री सुधीर कुमार गुप्ता का दोपहर 2.35 P.M. पर मोबा. नं. 9406717617 से मो. नं. 9926359608 पर आयकर कार्यालय, सागर में राजकुमार खटीक CEFPK 7387R A.Y. 2010-11 के केस में हाजिर होने हेतु काल आया था। मैं एवं राजकुमार खटीक आयकर अधिकारी के कार्यालय में पहुँचे थे परंतु आयकर अधिकारी सागर कार्यालय से तबियत खराब होने से डॉक्टर के पास गए थे, ऐसी सूचना कार्यालय क्लर्क श्री हरिप्रसाद ने दी थी। अतः 27/09/2017 को पेशी नहीं हो सकी थी।
3. यह कि, 25/10/2017 को मेरी पारिवारिक परेशानियों के कारणों से मैं और राजकुमार खटीक पेशी में हाजिर नहीं हो सके थे।

4. In the affidavit, it has been submitted that hearing of appeal could not be conducted because the Income Tax Officer was not well as reported by the concerned Clerk of the office. It is further submitted that subsequent to that the assessee could not appear

because of his family problems. In the facts and circumstances of the present case, we find that the assessee could not comply the notice u/s 142(1) of the Act due to a reasonable cause. The explanation of the assessee is satisfactory and therefore, we feel it appropriate to set aside the order of Ld.CIT(A) and delete the penalty of Rs.10,000/- levied by the AO.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 20/09/2023.

Sd/-

**(PAVAN KUMAR GADALE)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Amit Kumar

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar
Jabalpur Bench