

IN THE INCOME TAX APPELLATE TRIBUNAL  
“DB” BENCH, JABALPUR  
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER  
ITA No. 77/Jab/2023  
(A.Y: 2012-13)

Manasi Bhattacharya, C-501, Phase-II, Nibm Road, Raheja Vistas, Opp Cloud Nine Society, Pune-411060, Maharashtra.	Vs.	ITO, Ward-1(2), Aayakar Bhawan, Napier Town, Jabalpur-482001, Madhya Pradesh.
PAN/GIR No. : AJDPB1117F		
Appellant	..	Respondent

Appellant by :	Shri.Sapan Usrethe, Advocate.AR
Respondent by :	Shri.Rajesh Kumar Gupta, Sr. DR

Date of Hearing	15.09.2023
Date of Pronouncement	20.09.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC) / CIT(A) passed u/sec 271(1)(b) and 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. The learned Commissioner of Income tax (Appeal) was not justified in confirming the penalty without considering the reply and documents filed during the course of appellate proceedings.*

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2. The learned Commissioner of Income tax (Appeal) was not justified in confirming the penalty on the ground that challan was paid in Jabalpur and also Vakalatnama was executed in Jabalpur which is incorrect as challan was paid by his advocate at Jabalpur and Vakalatnama was send to her by the advocate at Jabalpur and she has signed it in Pune and such a hyper technical reason for confirming the penalty is bad in law and is not expected from a Judicial/ Appellate authority. CIT(A)

3. The learned Commissioner of Income tax (Appeal) was not justified in confirming the penalty without appreciating that penalty was levied on the reason which was never been raised during the penalty proceedings by the AO and hence it is bad in law.

4. The learned Commissioner of Income tax (Appeal) was not justified in deleting the penalty of Rs.30,000 on account of non appearance in quantum proceeding without appreciating that no notice was received by her as she was living at Pune since 2003 i.e after her marriage.

5. The appellant craves for leave to amend, add to or omit any ground up to the time of hearing of the appeal

2. The brief facts of the case are that, the assessee in the F.Y 2011-12 has received interest on term deposits from bank of Rs.1,57,711/- and interest on SB account of Rs. 3,322/- and dividend income of Rs. 9,455/-.Since the income was below taxable income, the assessee has not filed the income tax return. Whereas the Assessing Officer (AO) has received information that the assessee has made credit card bill payments of more than Rs.1 lakh and made

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term deposits of more than Rs. 2 lakhs in F.Y.2011-12. The AO has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act. In the course of assessment proceeding, the AO has issued notices u/s 142(1) of the Act to explain the sources but there was no compliance. Hence the AO made the best judgment assessment u/s 144 r.w.s147 of the Act with the addition of Rs. 22,76,521/- vide order dated 9.12.2019.

3. Subsequently the AO has initiated penalty proceedings u/s 271(1)(b) of the Act as the assessee has not complied with the notices U/sec142(1) of the Act dated 21.08.2019, 14.10.2019 and 15.11.2019. Whereas the assessee has filed reply on 24.01.2020, 18.03.2021 and on 13.08.2021. The assessee has explained the facts that, the assessee is a house wife and she was in Jabalpur till December 2003 and after marriage she shifted to Pune in January 2004. Further when the notices were issued she was not residing in Jabalpur and the assessee has travelled to Sydney to meet her brother. The assessee has provided copy of air tickets and passport along with boarding pass to substantiate that there is no wanton for non compliance to notices. Whereas the AO was not satisfied with the

explanations and levied penalty of Rs.30,000/- and passed the order u/s 271(1)(b) of the Act dated 30.12.2021.

4. Aggrieved by the penalty order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) has confirmed the action of the AO and sustained the penalty and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR of the assessee submitted that the assessee has cooperated in submitting the information in the proceedings and there is no wanton act of the assessee for non compliance to the notices and the reply was filed subsequently in the proceedings. The Ld.AR substantiated the submissions with the factual paper book and judicial decisions and prayed for allowing the appeal. Per Contra, the Ld. DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. Prima-facie the AO has levied the penalty u/s 271(1)(b) of the Act as the assessee has not complied with the notices. Whereas the assessee has filed the reply on 24.01.2020, 18.03.2021 and 13.08.2021 explaining the reasonable cause with the facts that the assessee is a

house wife and she was in Jabalpur till December 2003 and after marriage, she shifted to Pune in January 2004. Further when the notices were issued she was not residing in Jabalpur and the assessee has travelled to Sydney to meet her brother. The assessee has provided copy of air tickets and passport along with boarding pass placed at page 10 to 24 of the paper book to substantiate that there is no wanton for non compliance to notices Further on the additions made by the assessing officer , the assessee has filed an appeal with the CIT(A).We find the assessee has explained the reasonable and sufficient cause. Hence considering the facts and circumstances, we set-aside the order of the CIT(A) and direct the Assessing officer to delete the penalty and allow the grounds in favour of the assessee.

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

Order pronounced in the open court on 20.09.2023

Sd/-  
(OM PRAKASH KANT)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Jabalpur, Dated 20.09.2023

KRK, PS  
Copy of the Order forwarded to :

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1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Jabalpur