

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.184/Ind/2023
(Assessment Year:2017-18)

Chhapan Bhog Shop No.7 Hare Krishna Complex, 10 No Stop Arera Colony Bhopal	Vs.	NFAC Delhi
(Appellant / Assessee)		(Revenue)
PAN: AA AFC 7125Q		
Assessee by	Ms. Nisha Lahoti, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	20.09.2023	
Date of Pronouncement	22 .09.2023	

O R D E R

PER VIJAY PAL RAO, JM:

This appeal by the Assesse is directed against order dated 16.03.2023 of Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi arising from penalty order passed u/s 272A(1)(d) of the Act for A.Y.2017-18. The assessee has raised following grounds of appeal:

“1. That on the facts and in the circumstances of the case the order of the learned lower authorities are vitiated on several grounds hence the same may kindly be quashed.

2. That the order of the learned lower authorities passed are unlawful and illegal.

3. That the learned lower authorities were not justified in not allowing proper and meaningful opportunity of being heard.

4. That the various findings of the learned lower authorities are opposed to the facts hence the same may kindly be quashed.

5. That on the facts and circumstances of the case The learned assessing officer erred in making and The Learned CIT Appeals in confirming the action of the learned assessing officer in levying the penalty of Rs.10,000/- U/s 272A(1)(d).

6. The above grounds are independent to each other.”

2. The Id. AR of the assessee has submitted that the AO has levied penalty u/s 272A(1)(d) of the Act for non-compliance of notices issued u/s 142(1) dated 13.03.2018 which is placed at page no.12 of the paper book. The AR has pointed out that the AO vide notice u/s 142(1) asked the assessee to file the return of income. She has submitted that the assessee complied with the said notice and filed reply dated 21.03.2018 which was duly received by the AO on 26.03.2018 placed at page no.13 of the paper book. The assessee in this reply has explained that earlier M/s Chhappan Bhog having PAN AA AFC7125Q was a partnership firm carrying business and thereafter the partnership firm was dissolved by the mutual consent of the partners on 01.04.2012 and the business of the partnership firm was taken over and is being continued by one of the partners. Therefore, M/s Chhappan Bhog, partnership firm was non-existence w.e.f 31.03.2012 and the said PAN was also discontinued. Consequently no return of income for A.Y.2017-18 was required to be filed on behalf of the partnership firm under the said discontinued PAN. Therefore, the Ld. AR has submitted that when the assessee has duly complied the notice issued by the AO u/s 142(1) then the question of default on the part of the assessee does not arise and the penalty levied by the AO u/s 272A(1)(d) is not justified and same is liable to be deleted.

3. On the other hand, Ld. DR has relied upon the orders of the authorities below.

4. We have considered the rival submissions as well as relevant material on record. The AO in the assessment order dated 28.02.2019 has stated that the assessee has not filed its return of income as required under the provisions of section 139(1) of the Act. A notice u/s 142(1) was issued on 13.03.2018 calling the assessee to prepare true and correct return of income for A.Y.2017-18. The AO has passed the assessment order u/s 144 of the Act whereby an addition on account of deposit in the bank account of Rs.11,01,800/- was made by the AO. In the meantime the AO initiated penalty proceedings u/s 272A(1)(d) for non-compliance of notice issued u/s 142(1) of the Act and levied the penalty of Rs.10,000/- vide order dated 23rd August 2021. It is manifest from the record that the assessment order as well as penalty order u/s 272A(1)(d) were passed on the non-existing partnership firm. The assessee has now brought before us the reply filed in response to notice u/s 142(1) of the Act and submitted that there is no default on the part of the assessee in compliance of notice u/s 142(1) of the Act. It is pertinent to note that the AO has issued notice u/s 142(1) dated 13.03.2018 as under:

“Notice Under Clause(), Sub-Section (1) of Section 142 of the Income-Tax Act, 1961

Sir/Madam,

In connection with assessment for assessment year 2017-18, you are required to prepare a true and correct return of your income in respect of which you are assessable under the Income-tax Act, 1961 (Act), during the previous year relevant to the assessment year, mentioned above.

The said return of income should be in appropriate form as prescribed in Rule 12 of the Income Tax Rules, 1962 and duly verified in accordance with provisions of section 140 of the Act .

The said return of income is required to be furnished as per the conditions and manner prescribed in Rule 12 of Income-tax Rules, 1962, on or before 31/03/2018.”

5. In response to the said notice the assessee filed reply dated 21.03.2018 which was received by the AO on 26.03.2018 placed at page no.13 as under:

“In reference to the above mentioned notice we would like to state that M/S Chnappan Bhog VIDE PAN AA AFC7125Q was partnership firm carrying business and and the said firm was dissolved by the mutual consent of the partners on 1/04/2012 and therefore the said partnership was dissolved (copy of dissolution deed is also attached herewith).

Therefore M/s Chhappan Bhog PAN AA AFC7125Q was discontinued on 31/03/2012 and hence no filing of income tax return for AY 2017-18 as the firm does not exist during the AY 2017-18.

We shall be pleased to furnish any other details as required by your good self.”

6. Thus, it is clear that the assessee has explained the relevant facts that erstwhile partnership firm M/s Chhappan Bhog was dissolved w.e.f. 01.04.2012 and thereafter the business of the partnership firm was taken over and continued by one of the partners as proprietorship concern. This explanation of the assessee is a due compliance to the notice issued by the AO u/s 142(1) calling for a return of income on behalf of the erstwhile partnership firm. Accordingly when the assessee has duly complied with notice u/s 142(1) then the penalty levied by the AO u/s 272A(1)(d) of Rs.10,000/- is not sustainable and liable to be deleted. We order accordingly.

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

Order pronounced in the open court on 22 .09.2023

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 22.09.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore