

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 2483/DEL/2023  
[Assessment Year: 2016-17]**

M/s Gopesh Fabrics Pvt. Ltd., IPSO Legal, H-35, 1 <sup>st</sup> Floor, Jangpura Extension, New Delhi-110014.  PAN- AAFCG3405P	<u>Vs</u>	Income-tax Officer, Ward-1(3), Faridabad
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	<b>Sh. Shyam sunder, Adv.</b>	
<b>Department represented by</b>	<b>Sh. Baldev Singh Negi, Sr. DR</b>	
<b>Date of hearing</b>	<b>30.10.2023</b>	
<b>Date of pronouncement</b>	<b>30.10.2023</b>	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 31.07.2023, pertaining to the assessment year 2016-17, confirming the penalty levied by the Assessing Authority u/s 271(1)(b) of the Income-tax Act, 1961. The assessee has raised following grounds of appeal:

*“1. That the Ld. CIT(A), NFAC has erred in law as well as on facts in sustaining me addition of Rs. 10,000/- levied by Ld. AO u/s 271(1)(b) of the Act for no*

2. *That the Ld. CIT(A), NFAC has erred in law as well as on facts in not appreciating the fact that in the quantum proceeding, assessment order was passed u/s 143(3) of the Act after considering all the relevant documents and replies furnished by assessee.*

3. *That the Ld. CIT(A),NFAC has erred in law as well as on facts in not appreciating reasonable cause for non-compliance of notice issued u/s 142(1) of the Act and hence penalty levied u/s 271(l)(b) of the Act to the tune of Rs. 10,000/- is bad in law.*

4. *The above grounds of appeals are independent of and without prejudice to each other.”*

2. Facts of the case, in brief, that during assessment proceedings for A.Y. 2016-17, the AO had issued notice u/s 142(1) of the Income-tax Act, 1961 (the “Act”) requiring him to furnish the information/ documents as required in the said notice. The assessee did not comply with the notice issued by the AO. Thereafter the AO vide show cause notice dated 24.09.2018, u/s 274 read with section 271(1)(b) of the Act, required the assessee to show cause as to why penalty u/s 271(1)(b) of the Act be not levied for non-compliance of statutory notice u/s 142(1). No reply alleged to have been filed on behalf of the assessee in response to the said notice. Therefore, the AO presumed that assessee had nothing to say for non-compliance of statutory notice issued u/s142(1) and vide penalty order dated 20.03.2019 imposed a penalty of Rs. 10,000/- u/s 271(1)(b) of the Act. In appeal, the learned CIT(A) affirmed the penalty order. Aggrieved, the assessee is in appeal before this Tribunal.

3. On behalf of the assessee, Brief synopsis, is available on record, submitting that the assessee had duly complied with the statutory notice issued by the Assessing Authority and had filed requisite details to the AO on 03.10.2018 i.e. five days before the date fixed on 08.10.2018, as mentioned in the assessment order by the AO itself. Relevant submissions in the brief synopsis are reproduced

hereunder:

*“3. It is submitted that the notice issued u/s. 142(1) of the act, 1961 along with copy of screenshot of reply dated 17.08.2018 and 03.10.2018 filed by assessee before Ld. AO during the course of assessment proceeding in response to notice issued u/s. 142(1) of the Income Tax Act’ 1961 are placed **Paper Book pages 1-3.***

*4. It is submitted that a show cause notice u/s. 274 read with section 271(1)(b) of the Income Tax Act, 1961 was issued on 24.09.2018 fixing the case for hearing on 08.10.2018, and against that assessee had duly furnished its reply on 04.10.2018. However, in the penalty order passed u/s 271(1 )(b) of the Act, 1961. Td. AO has recorded the incorrect finding in Para 2 that appellant company has not filed any reply to the said notice. The copy of notice u/s. 274/271(1 )(b) of the act, 1961. Along-with copy of screenshot/reply dated 04.10.2018 filed by assessee before Ld. AO in response to notice dated 24.09.2018. **placed at Paper Book pages 4-6.***

*5. It is submitted that the Ld. AO in the assessment order passed u/s. 143(3) of the Income Tax Act, 1961 dated 06.12.2018 in second page para 1 of order mentioned about the issuance of said notice dated 24.09.2018, wherein date of hearing was fixed on 08.10.2018 and in the same para assessing officer noted that on 03.10.2018 **the assessee company has filed copies of the bank pass book, name of the shareholders to whom the shares were allotted during the year at premium along with the valuation of shares as per the provisions of Rule 11UA(c) of the income Tax Rules 1962. Apart from that, the assessee company has also filed the copy of ITR and Balance Sheet in the case of the investors.** It is submitted that penalty u/s. 271(1 )(b) of the Act, 1961 was levied for non-compliance of notice dated 24.09.2018 which in fact was replied to by the assessee five days before the fixed date i.e., on 08.10.2018 **placed Paper Book pages 7-19.***

*6. It is submitted that the assessing officer issued notice online on 11.03.2019 fixing for 18.03.2019. However, Ld. AO noted that on the fixed date neither anyone attended nor any reply was filed. (Because no notice was issued online in the ITBA portal due to the sudden shift from physical mode to e-assessment proceedings in electronic/online mode). The screenshot of the **ITBA** portal herewith attached in this brief synopsis”*

3.1 The learned counsel for the assessee reiterated the submissions as made in the synopsis and submitted that since the assessee had duly filed requisite details in time before the AO, the assessee may be treated to have complied with the

statutory notice u/s 142(1) of the Act and no fault can be attributed to the assessee for levy of penalty u/s 271(1)(b) of the Act. He prayed for deletion of penalty levied by the AO.

4. On the other hand, learned DR supported the orders of the authorities below.

5. We have heard rival submissions and perused the material available on record. The averments made in the brief synopsis could not be controverted by the learned DR. Therefore, considering the facts and circumstances of the case we are of the considered view that as the Revenue has not been able to establish deliberate fault for non-compliance of statutory notice on the part of the assessee, no adverse inference for imposition of penalty u/s 271(1)(b) of the Act should be drawn against the assessee. Accordingly, we are inclined to delete the impugned penalty levied by the AO. Grounds of appeal stands allowed accordingly.

6. Appeal of the assessee is allowed.

Order pronounced in open court on 30.10.2023.

**Sd/-**  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**  
**\*MP\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI