

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 34/Rjt/2023  
Assessment Year 2012-13**

Premilaba Ramdevsingh Jadeja, 29, Harihar Society, Rajkot, (Gujarat)  PAN: AGKPJ2911R (Appellant)	Vs	The ITO, Ward-2(1)(1), Rajkot  (Respondent)
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**Assessee Represented: Shri Samir Bhuptani, A.R.  
Revenue Represented: Shri Ashish Kumar Pandey, Sr.D.R.**

Date of hearing : 14-09-2023  
Date of pronouncement : 31-10-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against the Appellate order dated 14.12.2022 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), confirming the levy of penalty under section 271(1)(b) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2012-13.

2. Brief facts of the case is that the assessee is an individual. For the Assessment Year 2012-13 the assessee has not filed her original Return of Income, but had made transaction of Time deposit to the tune of Rs.11 lakhs. Therefore the assessment was reopened by issuing a notice dated to 31-01-2019 under section 148 of the Act. However the assessee has not responded to the above notice and not filed the Return of Income. Therefore a notice under section 142[1] dated 12-09-2019 was issued calling upon the assessee to explain the time deposit in her bank account. As the assessee failed to respond to this notice, another notice under section 142[1] dated 16-10-2019 was issued requesting the assessee to show cause as to why an amount of time deposit to the tune of Rs.11 lakhs in Bank of India should not be treated as unexplained money within the meaning of section 69A of the Act and added to the total income of the assessee. As there was no response against this notice assessing officer passed an exparte assessment order making an addition of Rs.12,90,000/- and also initiated penalty proceedings under section 271[1][c] and 271[1][b] of the Act.

2.1. During penalty proceedings u/s.271[1][b], notice dated 21.11.2019 was served on the assessee, fixing the case for hearing on 06-12-2019, but there was no response from the assessee. During the faceless assessment proceedings the assessee filed her reply in ITBA Portal and follows:

*"... 1. "In this case the AR of the assessee Sh. PM Parmar appeared before the then Assessing Officer and explained the facts to him and also submitted that identical issue was already dealt with in earlier*

assessments. However, the AO asked the AR to come on some other time as he was busy for some meeting with higher authority.

2. The AO day the AR was at Ahmedabad and he requested that he will be appear on next day only. The AO intimated that he was running out of time and hence he had to pass the order and under these circumstances the assessment has been finalized ex-parte.

3. It may please be appreciated that the issue in the assessment was not new either to the department or to the assessee since the same was already dealt with by the department in the earlier assessments. Thus, non-compliance was not intentional or mala fide.

4. Secondly, it may also be appreciated that the assessments of sons of the assessee were also pending before the same AO and they were completed by passing order u/s 143(3) of the Act. Copies of assessment orders in the case of sons of the assessee viz. Shri Rahulsinh Jadeja (PAN-AHJPJ3085C) and Mehulsinh Jadeja (PAN- AIZPJ4582H) are attached herewith. It may please be noted from the same that the issue was identical and resembles in both the cases with the issue involved in the case of the assessee. Thus, when the assessee's AR can represent matter of sons of assessee there is no reason for him to not to appear for the assessee, more specifically when the identical issue was already dealt with by the department in the earlier year.

5. It may also be appreciated that when the past records are in favour of the assessee and when the explanation is also available with the assessee and when the explanation on the similar line is accepted in the case of the assessee as well as in the case of the assessee herself there is no motive or intention left with the assessee for non-compliance or for non-appearance in the matter.

6. The assessee has forwarded all the notices to her tax consultant Mr. PM Parmar and he had attended the office of the AO as well. The assessee was, therefore, under genuine and natural bon fide belief that the required presentations have been made before the AO, as was done in the earlier assessments and in the case of her sons. Thus, the assessee is nowhere culprit, mala fide or can be held responsible for non-compliance, if any, as she is too simple, ordinary and typical Indian woman and can't be expected to approach the AO to inquire whether her case is being represented or not."

2.2. The reply of the assessee was considered by the A.O., but not found satisfactory as the assessee does not offer any relevant documents/ proofs or any genuine reason for non-compliance of the statutory notice issued u/s.142[1] of the Act on 12-09-2019.

Further pendency of the quantum appeal before CIT[A] cannot be a ground for dropping penalty under section 271[1][b] for non-compliance of statutory notice issued u/s.142[1] of the Act and thereby imposed penalty for a sum of Rs. 10,000/-.

2.3. Aggrieved against the same the assessee filed an appeal before National Faceless Appeal Centre, Delhi. The Ld CIT[A] after considering in detailed the submissions of the assessee and deliberate non-compliance of statutory notices, confirmed the levy of penalty u/s.271[1][b] and dismissed the appeal observing as follows:

*".... Considering the facts of the case, it is held that appellant has not complied with the notice dated 12.09.2019 issued u/s 142(1) of the Income Tax Act, 1961 for the A.Y.2012-13. The Assessing Officer clearly mentions in its penalty order dated 30.12.2021 (refer Sl. No. 3 at Page.1) that, a penalty show cause notice dated 21.11.2019 was issued separately to the assessee u/s 271(1)(b) of the IT Act, 1961, seeking a reply from the assessee why a penalty for a sum of Rs. 10,000/- be not levied for such non-compliance of a statutory notice. The said penalty notice issued dated 21.11.2019 duly granted an opportunity for hearing with a date of hearing as 06.12.2019. However, the same remained non-complied. Another show cause notice dated 05.08.2021 was issued to the assessee seeking its reply to the said penalty notice. It is only now that, the appellant respond to the final show cause opportunity issued by the AO, which was considered by the AO and which was quoted in the body of the penalty order. The AO has held that, the assessee has not submitted any relevant documents/ proof or any genuine reason for non-compliance of the aforesaid notice issued u/s 142(1) of the IT Act, 1961 dated 12.09.2019 relevant to the assessment proceedings for the AY 2012-13. The grounds of the assessee do not stand as the arguments do not justify the continued non-compliance of the aforesaid statutory notice us/ 142(1) of the IT Act, 1961 for this AY 2012-13 further the assessee failed to substantiate by means of any documentary evidence/ proof or genuine reasons for such non-compliance. Also in light of the fact that, the AO clearly mentions its ex-parte assessment order passed u/s. 144 r.w.s 147 of the IT Act, 1961 for this very AY 2012-13 that, the "assessee is non-cooperative to the departmental proceedings and not responding to the statutory notices" (refer sl. No. 2. pg. 1 of relevant order). Infact the very same assessment order in its para 3 on page 1 further mentions that, another opportunity was provided to it in the interest of natural justice vide another show-cause notice u/s 142(1) of the IT Act, 1961 dated 16.10.2019 and even before dated 16.07.2019, which too remained non-complied. Hence, it appears from facts that, the non-compliance was deliberate and continuous on the part of the assessee. Even if presumed the issue involved was similar to any other case in the past, it does not empower the assessee to indulge in non-compliance of any statutory notice zed to be issued as per law and which*

*is valid and carries the force of law. Lastly, the assessee agrees in its grounds of appeal that, she "... has forwarded all the notices to her tax consultant Mr. PM Parmar....", whom she has duly authorized to act as her authorized representative (AR) and to appear before the department on her behalf and now cannot heap the blame on the AR and absolve itself absolutely of all responsibility and accountability as laid down by the Act on an assessee. There is no infirmity in the penalty order and it is found that the AO has rightly treated the penalty proceedings separately and decided the penalty proceedings u/s. 271(1)(b) of the IT Act, 1961 as per law.*

*2. During appellant proceedings, appellant uploaded application under rule 46A for admission of additional evidence and attached copy of bank pass book, which has no relevancy with penalty appeal proceedings u/s 271(1)(b) of the Income Tax Act, 1961. As the assessment in the appellant's case was also completed u/s 144 of the Income Tax Act, 1961 i.e. ex-parte assessment which means the assessee did not co-operate with the AO during the assessment proceedings and did not submit the relevant documents or proof etc. when it opportunity to do so and hence, the same cannot be accepted now.*

*3. Considering the above mentioned facts, reasons and circumstances and in law, appeal of the assessee is dismissed and penalty order of the AO u/s 271(1)(b) of the IT Act 1961 dated 30.12.2021, confirmed imposing the penalty amounting to Rs.10,000/-.*

*3. In the result, the appeal is dismissed."*

3. Aggrieved against the same the assessee is in appeal by raising the following Grounds of Appeal:

*1. Ld. CIT(A) erred in law as well as on facts in passing the appellate order u/s 250 of the Income Tax Act 1961 in without giving reasonable opportunity of being heard to the appellant inspite of knowing the fact that the appellant has furnished submission on quantum matter under bonafide belief that the appeal was fixed for quantum u/s 271(1)(b) of the act of confirming the same matter and not for penalty matter.*

*2. Ld. A.O. erred in law as well as on facts in levying penalty 10,000.00/- and Ld. CIT(A) erred in law as well as on facts in confirming the same.*

3.1. The Ld. Counsel Mr. Samir Bhuptani appearing for the assessee submitted before us two fold arguments [a] that by inadvertent mistake and bonafide belief the assessee uploaded the submissions before NFAC on quantum appeal and filed additional documents, instead of penalty appeal and therefore the order passed by NFAC be set aside and fresh hearing be offered in the

interest of natural justice. [b] three assessments were reopened in the family of the assessee on identical information by the very same assessing officer. All the three cases were entrusted to a Tax Consultant Shri Praful Parmar, who completed the assessments in the case of two sons of the assessee. The Tax Consultant was provided with required details namely bank statement and time deposit summary, however when he attend the hearing, the Ld. AO was busy in a meeting with his higherups, later when the Ld. AO called upon the A.R., he was out of station and hence exparte assessment order was passed. Therefore it is a fit case to set aside the appeal back to the file of NFAC and pass order on merits.

4. Per contra Ld Sr DR Mr. Ashish Kumar Pandey appearing for the Revenue supported the order passed by the lower authorities particularly Ld CIT[A] clearly held that the assessee failed to furnish explanation for the non-compliance of the statutory notices issued by the assessing officer. Further the assessee has neither filed original return of income u/s.139[1] nor filed return of income in response to the notice issued u/s.148 of the Act. As the assessee failed to comply with the statutory notices issued by the assessing officer the same as resulted in passing an exparte assessment order. As the assessee failed to comply any of the statutory notices and not given any explanation for the non-compliance which has warranted the levy of penalty u/s. 271(1)(b) of the Act, the same does not require any interference. Thus the appeal filed by the assessee is liable to be dismissed.

5. We have given our thoughtful consideration and perused the materials available on record including the submissions and Paper Book filed by the assessee. Though the assessee plead that by inadvertent mistake he has uploaded the written submissions before Ld. NFAC on quantum appeal and also filed additional documents, therefore prays to set aside the matter back to the file of Ld. NFAC in the Interest of Principle of Natural Justice. This argument of the assessee does not hold in good. Since the Ld. NFAC has categorically observed that the assessee failed to furnish reasons for non-compliance of the statutory notices issued by the Assessing Officer. Further the assessee has not filed her Return of Income u/s. 139(1) of the Act. Further in response to the reopening of notice u/s. 148 issued, the assessee failed to furnish the Return of Income and also not responded to the u/s. 142(1) notice dated 12.09.2019 as well as 16.10.2019 issued by the Assessing Officer. Thus the assessee is in the habit of not complying to the statutory notices issued by the Authorities. Even in the Grounds of Appeal before the Ld. NFAC as well as before us, the assessee has not adduced any proof or reasons for non-compliance of the statutory notices, which has resulted in exparte assessment order. It is also seen from the Paper Book filed by the assessee, the assessee's two sons namely Shri Mehulsinh Ramdevsinh Jadeja and Rahulsinh Ramdevsinh Jadeja, which are relating to the Assessment Year 2011-12 wherein reassessment orders u/s. 143(3) r.w.s. 147 were passed on 07.12.2018 admittedly in those cases, they filed their respective Returns of Income on 15.11.2018 and 24.11.2018 declaring total income of Rs. 1,33,410/- and Rs. 1,58,850/-. Whereas in the present assessee's case, she has neither filed the

original Return of Income nor filed the return in response to the notice issued u/s. 148 of the Act for A.Y. 2012-13. It is for this reason, the A.O. issued statutory notice u/s. 142(1) dated 12.09.2019, 16.10.2018 calling upon the assessee to file the Return of Income. The assessee neither filed the Return nor responded to the notice which has resulted in levying penalty u/s. 271(1)(b) of the Act, which in our considered opinion does not require any interference. Thus the assessee failed to adduce reasons nor responded to the statutory notices, therefore the Grounds raised by the assessee are hereby rejected and the appeal filed by the assessee is hereby dismissed.

6. In the result, the appeal filed by the Assessee is dismissed.

Order pronounced in the open court on 31-10-2023

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 31/10/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
राजकोट