

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.146/Ind/2023
(Assessment Years:2012-13)

Nishant Gupta B-61, Archeade Palace, Phase III Kolar Road	Vs.	Pr. CIT-2 Bhopal
(Appellant / Assessee)		(Revenue)
PAN: AKYPG6924B		
Assessee by	None	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	21.11.2023	
Date of Pronouncement	22 .11.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 09.02.2023 of Commissioner of Income Tax(Appeal), National Appeal Centre, Delhi arising from the penalty order passed u/s 271(1)(b) of the Act for A.Y.2012-13. The assessee has raised following grounds of appeal:

“1.That, on the facts and in the circumstances of the case, the order of the Ld. CIT(A) is bad in law.

2. That on the facts and in the circumstances of the case and in law, the Ld. AO erred in levying and Ld. CIT(A) in confirming the penalty of Rs.10,000/- u/s 271(1)(b).

3. That the appellant craves your leave to add or amend any grounds of appeal.”

2. None has appeared on behalf of the assessee when this appeal was called for hearing. It transpires from the record that nobody has appeared on behalf of the assessee even on the earlier dates when the appeal was listed for hearing and the Tribunal vide order dated 18.10.2023 granted last opportunity for arguing the appeal. Despite notice issued to the assessee as well as his authorized representative there is no response on behalf of the assessee. Accordingly the Bench proposes to hear and dispose of this appeal *ex-parte*.

3. We have heard the Ld. DR and perused the impugned order of Ld. CIT(A) confirming the penalty levied u/s 271(1)(b) of the Act. The CIT(A) has dismissed the appeal of the assessee in para 5 to 5.3 as under:

“5. Decision:

*5.1 All the grounds of appeal pertain to the levy of penalty u/s 271(1)(b) amounting to Rs 10,000/-. The facts of the case are that this case was reopened u / s 147 of the Act on the basis of information received from Investigation Wing that the appellant had deposited cash of Rs 18,60,000/- in his bank accounts during the relevant year under consideration, vide issue of notice u/s 148 dated 25.03.2019 requiring the appellant to file his return of income. Further, notice u / s * 142(1) of the Act was issued on 29.04.2019, to which the appellant did not respond. Hence, penalty proceedings u/s 271(1)(b) were initiated and notices u/s 274 issued. The appellant did not bother to respond to this notices and reminders / show cause also. In view of the same, the AO held that the appellant had nothing to say and proceeded to levy a penalty u / s 271(1)(b) of Rs 10,000/-.*

5.2 I have considered the submissions / contentions of the appellant, the assessment order as well as the penalty order of the AO. The AO had given due opportunities to the appellant during the penalty proceedings to explain why such penalty is not leviable but the appellant failed to avail the said opportunities. Further, the fact that even during the appellate proceedings inspite of sufficient opportunities being given, the appellant has not bothered to respond and avail the same, which shows that the appellant is a habitual defaulter and has not bothered to fulfill its statutory requirements.

5.3 In view of the above discussion, the penalty levied by the AO of Rs 10000 / (- u) / s 271(1)(b) is hereby confirmed and no reasonable cause for failure to comply has been established by the appellant.”

4. Thus, it is clear that due to non-appearance on behalf of the assessee the CIT(A) has passed the ex-parte order and dismissed the appeal of the assessee. It is pertinent to note that the penalty was levied by the AO for default on the part of the AO for non-compliance of notice u/s 142(1) dated 29th April 2019. However, the CIT(A) has not discussed the status of the assessment completed by the AO as well as the appeal if any filed by the assessee against the assessment order. Without considering the assessment order it is not possible to give conclusive finding whether there is a default on the part of the assessee for non-compliance of notice u/s 142(1) or not. Therefore, in the fact and circumstances of the case when the CIT(A) has dismissed the appeal of the assessee ex-parte and the relevant facts as would have emerged from the assessment order has not been taken into account while dismissing the appeal of the assessee we are of the considered opinion that the matter requires fresh consideration at the level of the CIT(A). Accordingly, we set aside the impugned order of CIT(A) and remand the matter to the record of the CIT(A) for fresh adjudication after considering relevant facts as well as giving one more opportunity of hearing to the assessee.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 22.11.2023

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

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 22 .11.2023

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