

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC " JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA. No. 631/JP/2023  
निर्धारणवर्ष / AssessmentYear :2013-14

Shri Madan Lal Jat S/o Shri Mangla Ram VPO DayodiyaRamsinghpura, Tehsil: Phulera, Jiapur	बनाम Vs.	The ITO Ward 7(1) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: BDPQJ 0380 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Sharwan Kumar Gupta, Advocate  
राजस्व की ओरसे / Revenue by : Mrs. Monisha Choudhary, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 21/11/2023  
उदघोषणा की तारीख / Date of Pronouncement: 12 /12/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee is directed against the order of ld. CIT(A) dated 20-09-2023, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2013-14 wherein the assessee has raised the following grounds of appeal.

“1. The impugned order u/s 271(1)(b) of the I.T. Act, 1961 dated 07.09.2022 as well as the notices and proceedings by the ld. AO are illegal, bad in law barred by limitation, without jurisdiction, without approval/satisfaction from the proper or competent authority, against the principle of natural justice and various other reasons or and further contrary to the real facts of the case hence the same may kindly be quashed.

1.2. The Id. AO has grossly erred in law as well as on the facts of the case in passing the Ex-parte order without providing adequate and reasonable opportunity of being heard in gross breach of law and not considering the material on record in the gross breach of natural justice. Hence the same entire addition may kindly be deleted, and the assessment order may kindly be quashed.

2. Rs.10,000/-: The Id. CIT(A) has grossly erred in law as well as on the facts of the case in confirming the penalty of Rs 10,000 u/s 271(1)(b) of the Act imposed by the Id. AO. The Ld. CIT(A) and AO have also erred in not considering the vital facts and material available on record in their true perspective and sense. Hence the penalty so made by the Id. AO and confirmed by the Id. CIT(A) is also being contrary to the real facts of the case and not according to the provision of law, hence the same may kindly be deleted in full.”

2.1 Brief facts of the case are that the AO imposed the penalty upon the assessee vide his order dated 07-09-2022 amounting to Rs.10,000/- u/s 271(1)(b) of the Act on the ground of failure to furnish or comply with notice u/s 142(1) dated 05-01-2022 and non-furnishing of information called for vide notice on portal on various dates. It may be noted that that in spite of issuance of show cause penalty notice on 18-08-2022 fixing the date of hearing on 5-09-2022, the assessee had not submitted his reply and according to the AO it indicated that the assessee had deliberately made non-compliance thereof. Hence, the penalty was imposed upon the assessee amounting to Rs.10,000/- u/s 271(1)(b) of the Act.

2.2 Against the penalty order dated 09-07-2022, the assessee carried the matter before the Id CIT(A) who confirmed the action of the AO by observing as under:-

3..... In the 1<sup>st</sup> and 2<sup>nd</sup> grounds the appellant confronted the legal validity of imposing penalty under section 271 (1)(b) of the Income Tax Act

1961 and the factual and legal validity of passing the exparte order by the A.O without providing adequate and reasonable opportunity of being heard. After perusal of quantum assessment order and the penalty order passed by the A.O. it is found that assessee has never complied to the notices/show cause issued by the AO. The appellant failed to avail the opportunity to bring his view before the AO. The AO had no other option but to pass order u/s 144 of the Act on the basis of information available on record. During penalty proceedings also notice u/s 271(1)(b) was issued vide letter/notice dated 24/03/2022 for non-compliance of notice u/s 142(1) dated 05/01/2022 and non- furnishing of information called for. The appellant again remains non-compliant. The above fact shows that the appellant was given enough opportunity to bring in the valid reason for noncompliance. The penalty provision as mentioned above when the AO is satisfied that any person has failed to comply with notice under subsection (1) of section 142, such person shall pay by way of penalty. During appeal proceeding also the appellant did not provide any reason for noncompliance for notice u/s 142(1) dated 05/01/2022 or in support of his grounds. Even the appellant did not file statement of facts with Form No. 35 during the appeal proceedings. Therefore, the ground taken by the appellant has no merit, hence dismissed.

2.3 During the course of hearing, the ld AR of the assessee submitted that no notice u/s 142(1) was served upon the assessee and failure to comply with the such notices cannot be said to be a default which may justify the levy of penalty u/s 271(1)(b) of the Act. He further submitted that the AO as well as ld. CIT(A) also

nowhere stated that these notices had been served upon the assessee. To this effect, the assessee filed an affidavit praying therein that no penalty can be imposed whose relevant para of affidavit is mentioned as under:-

“3. That I am not much literate person studied till 7-8th class. I am doing the work of labour contract at Tamilnadu. As I am working and living KrishnagiriTamilnadu from last 12-13 years, as proving from the bank statements as the cash were deposited at Krishnagiri Tamilnadu. The address on which the notices were being sent was my parents address of Rajasthan. Where my old parents were living. I was not living there. My parents are illiterate persons

4. That I had also no knowledge of any proceedings initiated against me, notices issued and order passed for the assessment year 2013-14. Moreover, notices and orders passed have never been served on me by any permissible mode as per income Tax Act. VIZ. Email, Speed Post and Registered Post as stated by the ossessee.

5. That also there was no mensrea/malafide intention for non compliance of assessing officer notices. I have come to know only when I had come at my Village in November 2022, and then I contacted to the Counsel at Jaipur, then he has applied for the certified copies of orders and documents and inspection of the assessment records on dt. 21.11.2022 to the ITO Ward 7(1), Jaipur, Copy of application is already filled. As we had received the certified copies of documents and orders on dt. 05.12.2022.

6. That due to all these reasonthe I could not make compliance of notice and the Id. AO nowhere provided any documentary proof that the notices were served on him. Hence we had requested to the Id. CIT(A) that "Therefore the Id. AO may kindly be asked to produce the documentary evidences of service of all the notices upon the assessee". Hence no penalty can be imposed.”

Further, the ld. AR of the assessee submitted that the appeal against the assessment order was pending where he had taken the ground of non-service of notices and the fate of quantum order may had direct impact on the present penalty order. Conclusively, the ld AR of the assessee prayed that the penalty confirmed by the ld.CIT(A) needs to be deleted for the reason that no service of notice by the AO u/s 142(1) was made available upon the assessee and there is no failure on the part of the assessee to comply with the notices if received by the assessee.

2.4 On the other hand, the ld. DR supported the order of the ld.CIT(A).

2.5 After hearing both the parties and perusing the materials available on record, the Bench noted that there was no service of notice to the assessee u/s 142(1) of the Act. Even the assessment is completed as ex-parte. The assessee in support of the contention filed an affidavit stating that there is no notice served as claimed by the department. The revenue could not controvert the contention raised before the lower authority and supported by an affidavit. Thus we feel that when the notice is not served under such condition then it was not possible for the assessee to comply with the same. Hence keeping in view the above facts and circumstances of the case as mentioned hereinabove, we do not concur with the findings of the ld CIT(A) which is dismissed. Thus the appeal of the assessee is allowed.

3.0 In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 12 /12/2023

Sd/-

(डॉ.एस.सीतालक्ष्मी)  
(Dr. S. Seethalakshmi)  
न्यायिकसदस्य / Judicial Member

Sd/-

( राठोडकमलेशजयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 12/12/2023.

**Mishra**

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Madan Lal Jat, Renwal ,Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 7(3), Jaipur
3. आयकरआयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्डफाईल / Guard File {ITA No. 631/JP/2023}

आदेशानुसार / By order,

सहायकपंजीकार / Asst. Registrar