

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 678/Ahd/2023
(निर्धारण वर्ष / Assessment Year : 2017-18)

Chintan Bharatbhai Shah 10, Vaishnav Society, Ramnagar, Sabarmati, Ahmedabad Gujarat, 380005	बनाम/ Vs.	The Income Tax Officer Ward-2(1)(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BZQPS8079D		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Mahesh Chhajed, A.R.
प्रत्यर्थी की ओर से /Respondent by :	Shri V. K. Mangla, Sr. DR

Date of Hearing	12/02/2024
Date of Pronouncement	14/02/2024

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed at the instance of the assessee is directed against the order dated 13.02.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi, arising out of the order dated 17.02.2022 passed by the NFAC, Delhi, under Section 272A(1)(d) of the Income Tax Act, 1961, (hereinafter referred to as ‘the Act’) for Assessment Year 2017-18.

2. The appeal is barred by limitation for 145 days. In support of reason for filing the appeal late an affidavit affirmed by the appellant has been filed before us with the following contentions:

“Appellant has filed an appeal before Hon'ble ITAT against order passed by the CIT (A). NFAC Delhi for AY 2017-18 on 06.09.2023.

Appellant has not been served penalty order passed by Ld CIT(A).

While going through the ITBA portal for status of appeal/demand it came to our knowledge that Ld CIT (A) has dismissed the appeal.

When the order passed by the Ld. CIT (A) came in the knowledge of appellant, appellant had preferred an appeal before Hon'ble ITAT. There was bonafide reason for delay in filing appeal

I request that if Condonation of delay for filing appeal is granted it will not cause any harm to the department and matter can be decided on the merit.

I solemnly verify that facts stated above are true to the best of my knowledge and belief and that nothing material has been concealed by me.”

The reason mentioned therein found to be genuine and therefore the delay is condoned.

3. The appellant has challenged the penalty levied under Section 272A(1)(d) of the Act to the tune of Rs.30,000/-.

4. The facts of the case is this that during the course of assessment proceeding notices under Section 142(1) of the Act along with questionnaire were issued to the appellant but without any result and ultimately the assessment was finalized under Section 144 of the Act on 06.12.2019 determining total income at Rs.30,21,500/-. Penalty under Section 272A(1)(d) of the Act were

initiated and finalized upon levying penalty of Rs.30,000/- under Section 272A(1)(d) of the Act finding the appellant in default in not responding against 3 notices dated 07.02.2019, 05.08.2019, 04.10.2019. At the time of hearing of the instant appeal, Ld. Counsel appearing for the appellant submitted before us that the issue is squarely covered by the order passed by the ITAT, Mumbai Bench in the case of Triumph International Finance India Limited vs. DCIT, ITA No. 1870/ Mum/ 2020 for A.Y. 2017-2018, where it has been held that when sufficient reasonable cause for not responding to the notice issued under Section 142(1) of the Act has been shown by the appellant, the penalty under Section 272A(1)(d) of the Act is not justified. In fact, the order passed was never been served upon the appellant and both the authorities below passed an ex parte order.

5. It was also brought to our notice that notice under Section 143(2) of the Act was issued by the ITO, Ward-2(2)(1), Ahmedabad, which was the first year of Faceless assessment and the appellant was not acquiescence with the Faceless assessment neither aware of notices issued through Portal/e-mail. Finally, the Ld. AO passed order under Section 144 of the Act dated 06.12.2019 making addition of Rs.28 Lakhs treating the same as unexplained money under Section 69 of the Act.

6. We also considered the reason assigned by the Ld. CIT(A) while upholding the order passed by the Ld. AO levying penalty against the appellant, the Ld. CIT(A) simply writing 'there

appears to have been no compliance on the part of the appellant', which is also not found to be a reasoned one, particularly when, a penalty levied against the appellant is being confirmed.

7. The Ld. DR has also failed to support the observation made by the Ld. CIT(A) without being supported by any reason and/or explanation to that effect. We have further considered the judgment passed by the ITAT, Mumbai Bench in the case of Triumph International Finance India Limited (supra) while dealing with this particular matter, the Ld. Bench observed as follows:

“4. We have heard the submissions made by rival sides. The Assessing Officer vide order dated 21/12/2019 has levied penalty of Rs.10,000/- under section 272A(1)(d) of the Act for non-compliance of the notice issued under section 142(1) of the Act. Undisputedly, no explanation was furnished by the assessee before the Assessing Officer for non-compliance of the notice under section 142(1) of the Act. As per the contentions of Id. Authorized Representative of the assessee, the notice under section 142(1) of the Act was served on the assessee electronically. The Department was gradually moving towards e-assessments and the notices were being served to the assessee online/electronically and the year 2019 being the first year of this shift from physical to electronic mode coupled with the fact that assessee was not carrying out any business operations during the relevant period and hence, was working on minimal employees, the employees of the assessee failed to take note of the notice issued electronically. We are satisfied that the assessee has been able to show reasonable cause for not responding to the initial notice issued under section 142(1) of the Act. It is pertinent to mention here that subsequently on learning about ongoing assessment proceedings, the assessee appeared before the Assessing Officer and furnished the requisite details. The Assessing Officer after taking note of the documents/submissions of the assessee has passed the assessment order under section 143(3) of the Act. It is not a case of absolute non-appearance of the assessee before the Assessing Officer.

5. The first appellate authority has rejected the explanation furnished by the assessee for non-compliance of the notice issued under section 142(1) of the Act merely for the reason that during penalty proceedings under section 272A(1)(d) of the Act, the assessee has not stated the reasonable cause. We are not in agreement with the findings of CIT(A). The assessee has explained that about ongoing assessment proceedings the assessee came to know only on receipt of order u/s. 272A(1)(d) of the Act and demand notice. The explanation furnished by the assessee before the CIT(A) and before the Tribunal is consistent. We are satisfied that nonappearance of the assessee in response to the initial notice under section 142(1) of the Act was not deliberate. The year 2019 being the initial year of shift towards digital and electronic mode, the mistake appears to be bonafide. The assessee has been able to show reasonable cause for the failure to comply with statutory

notice u/s. 142(1) of the Act. Thus, in our view penalty levied u/s. 272A(1)(d) of the Act is unsustainable. The Assessing Officer is directed to delete the penalty.

6. In the result, impugned order is set-aside and appeal by the assessee is allowed.”

8. Thus, having regard to the facts and circumstances of the case and having regard to the reason shown by the appellant for not being able to appear before the Ld. AO against the notice issued under Section 142(1) of the Act, which seems to be genuine, the penalty under Section 272A(1)(d) of the Act is not called for. Thus, on the basis of the facts available before us, respectfully relying upon the ratio laid down in the judgment relied upon by the Ld. AR passed by Mumbai Bench on identical issue, we allow this appeal by deleting the penalty levied by the authorities below against the appellant.

9. In the result, appeal preferred by the appellant is allowed.

This Order pronounced on 14/02/2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 14/02/2024
S. K. SINHA

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

True Copy
आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad