

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'B' Bench, Hyderabad**

**Before Shri R.K. Panda, Vice-President**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

आ.अपी.सं / **ITA No. 331/Hyd/2023**  
(निर्धारण वर्ष/Assessment Year: 2013-14)

Invest Smart India (P) Ltd Hyderabad PAN:AFTPG1095F	Vs.	Income Tax Officer Ward 2(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by: Shri P Murali Mohan Rao, CA		
राजस्व द्वारा/Revenue by: Shri N. Raja Kumar, DR		
सुनवाई की तारीख/Date of hearing: 20/02/2024		
घोषणा की तारीख/Pronouncement: 22/02/2024		

**ORDER**

**Per R.K. Panda, Vice-President**

This appeal filed by the assessee is directed against the order dated 19.04.2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2013-14.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the learned CIT (A) NFAC in confirming the penalty of Rs.30,000/- levied by the Assessing Officer u/s 271(1)(b) of the I.T. Act.

3. Facts of the case, in brief, are that the assessee is a private limited company and did not file its return of income nor

submitted its reasons for non-filing. The case of the assessee was reopened after recording reasons and after taking statutory prior approval from the competent authority. Accordingly, notice u/s 148 dated 31.03.2021 was issued and served upon the assessee. However, no return was filed by the assessee nor was any response to the statutory notices issued. The Assessing Officer, therefore, completed the assessment u/s 144 of the I.T. Act and determined the total income of the assessee at Rs.3,95,72,450/- by making addition of the same u/s 68 of the I.T. Act. Since the assessee did not respond to the statutory notices issued u/s 142(1) dated 30.06.2021, 29.11.2021 and 22.12.2021, the Assessing Officer issued notice u/s 274 r.w.s. 271(1)(b) dated 29.3.2022 asking the assessee to explain as to why penalty u/s 271(1)(b) should not be levied. Since there was no response from the side of the assessee despite various opportunities granted, the Assessing Officer levied penalty of Rs.30,000/- u/s 271(1)(b) of the Act on the assessee for the 3 defaults.

4. Before the learned CIT (A) NFAC, the assessee, apart from challenging the penalty so levied on merit, challenged the levy of the penalty on the ground that the Assessing Officer has not taken prior approval of the JCIT/Add. CIT since the penalty so levied is above Rs.10,000/-. However, the learned CIT (A) NFAC dismissed the appeal filed by the assessee and upheld the penalty of Rs.30,000/- levied u/s 271(1)(b) of the Act.

5. Aggrieved with such order of the learned CIT (A) NFAC, the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee at the outset drew the attention of the Bench to the provisions of section 271(1)(b) r.w.s. 274 and submitted that since the penalty in the instant case has exceeded Rs.10,000/-, the Assessing Officer was duty bound to obtain the prior approval of the JCIT/Add.CIT which he has not done. Therefore, such levy of penalty by the Assessing Officer which has been upheld by the learned CIT (A) NFAC should be cancelled. Referring to para 7.3 of the order of the learned CIT (A) NFAC he submitted that the learned CIT (A) NFAC has given a factual finding that no such approval was taken from the Add. CIT/JCIT before imposition of such penalty. Referring to the decision of the Coordinate Bench of the Tribunal in the case of P.C. Pantulu vs. Dy.CIT in ITA No.276/Hyd/2017 dated 11.04.2018, he drew the attention of the Bench to Para 7 of the order which reads as under:

*“7. It is to be observed that AO issued only one notice and levied two penalties for non-compliance on two dates. Technically speaking, each non-compliance requires separate show-cause notice/proceeding and AO cannot levy two penalties in one single proceeding. However, this is for advice of the AO to follow in future so that there cannot be any technical defects while completing penalty proceedings”.*

7. He accordingly submitted that since the Assessing Officer has not taken prior approval of the JCIT/Add CIT before levying of the penalty of Rs.30,000/- since penalty being not in accordance with law has to be cancelled.

8. The learned DR, on the other hand, submitted that the Assessing Officer has levied a penalty of Rs.10,000/- each for 3 defaults and has issued 3 separate demand notices and therefore, the Assessing Officer is not required to obtain any approval from the JCIT/Add.CIT although he has passed a combined order levying penalty of Rs.30,000/-.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case levied penalty of Rs.30,000/- u/s 271(1)(b) of the I.T. Act, 1961 for default of the assessee in not responding to the notices issued u/s 142(1) on 30.06.2021, 29.11.2021 and 22.12.2021 respectively. The relevant order u/s 271(1)(b) of the I.T. Act reads as under:

**Order under section 271(1)(b) of the Income Tax Act, 1961**

Sub: Penalty Proceedings u/s 271(1)(b) of IT Act, 1961 in the case of M/s. INVEST SMART INDIA PRIVATE LIMITED – PAN: AACCI4258D – AY: 2013-14 – Passing of Penalty Order – Reg.

Ref: 1.Assessment order u/s 147 r.w.s 144 of the IT Act, 1961 dated 29.03.2022.

2.Notice u/s 274 r.w.s.271(1)(b) of IT Act, 1961 dated 29.03.2022 issued by National Faceless Assessment Centre, Delhi.

3.Notice u/s 274 r.w.s.271(1)(b) of IT Act, 1961 dated 29.07.2022 issued by National Faceless Assessment Centre, Delhi.

4.This office notice u/s 274 r.w.s. 271(1)(b) of IT Act, 1961 dated 08.08.2022.

5. Showcause cum Final opportunity letter dated 30.08.2022 \*\*\*\*\*

**ORDER:**

The assessee case has been transferred to this office under clause 5(2) of Faceless Penalty Scheme, 2021, for completing penalty proceedings u/s 271(1)(b) of the Act, for the A.Y 2013-14. In this connection, this is to intimate that in accordance with section 129 of the Income Tax Act, 1961, the above referred case shall now be completed by the undersigned.

During the course of assessment proceedings, notices u/s. 142(1) dated 30.06.2021, 29.11.2021 & 22.12.2021 were issued seeking information. The assessee failed to respond to the notices. Assessment u/s 147 r.w.s 144 of the IT Act, 1961 was completed for the AY 2013-14 on 29.03.2022 determining total assessed income at Rs. 3,95,72,450/-.

Therefore, notice u/s 274 r.w.s. 271(1)(b) of IT Act, 1961 was issued on 29.03.2022 to show cause why the penalty u/s 271(1)(b) of IT Act, 1961 shall not be levied for failing to file any explanation or submission in response to the said notice. Considering the above and following the doctrine of natural justice, the assessee has been allowed another opportunities vide notices dated 29.07.2022 & 08.08.2022 followed by a showcause cum final opportunity notice dated 30.08.2022.

Though the assessee has been allowed sufficient opportunities, the assessee failed to submit explanation/ information. In the above circumstances, it is concluded that the assessee has no explanation to offer and penalty proceedings are completed on the basis of facts/ material on record.

As the assessee failed to comply with notices issued u/s. 142(1) of the Income Tax Act, 1961, dated 30.06.2021, 29.11.2021 & 22.12.2021 a total of penalty of Rs.30,000/- is levied u/s. 271(1)(b) of the Act [i.e. Rs. 10,000/- for each notice].

Accordingly, penalty of Rs. 30,000/- is hereby levied u/s 271(1)(b) of IT Act, 1961 on the assessee. This should be paid as per Demand Notice u/s. 156 of IT Act, 1961 issued separately.

10. We find when the assessee challenged before the learned CIT (A) NFAC that the Assessing Officer has not taken prior approval from the JCIT/Add.CIT, the learned CIT (A) NFAC vide para 7.3 of his order has held that although the Assessing Officer has not taken prior approval from the Add CIT/ JCIT before imposition of such penalty, but 3 separate demand notices were issued. Relevant observation of the learned CIT (A) NFAC at para 7.3 of his order reads as under:

7.3 The appellant has raised the objection in ground No.8 that no approval was taken from the range head before imposition of penalty as the amount was above Rs.10,000/-. From the penalty order u/s 271(1)(b) dated 13.9.2022, I find that no such approval was taken from the Add/JCIT of the range before imposition of such penalty but demand notice u/s 156 was issued separately for three such amount of Rs.10,000/- each. Thus, the AO though passed consolidate order but notice of demand was issued separately which is as per the Act. **Thus, ground No. 8 is dismissed.**

7.4 The appellant has not given cogent any ground with supporting evidence for failure to comply such notices before the Ld AO and during appellate proceeding. Thus, I do not find and I find no reason in altering the imposition of penalty u/s 271(1)(b) of Rs.30,000/- by the AO and upheld the same. **In view of this, all other grounds raised by the appellant are dismissed.**

11. A perusal of the assessment order as well as the order of the learned CIT (A) NFAC clearly shows that although the Assessing Officer has levied penalty of Rs.30,000/- on the basis of notice issued u/s 274 on 29.3.2022 and subsequent notices, however, he has not taken any prior approval of the Add. CIT/JCIT before levy of such penalty which is in excess of Rs.10,000/-. We find the provisions of section 274(2) which reads as under:

**Section 274(2) in The Income Tax Act, 1961**

*“(2)[ No order imposing a penalty under this Chapter shall be made-(a)by the Income-tax Officer, where the penalty exceeds ten thousand rupees;*

*(b)by the ][Assistant Commissioner or Deputy Commissioner] [ Substituted by Act 21 of 1998, Section 3, for " Assistant Commissioner" (w.e.f. 1.10.1998).][, where the penalty exceeds twenty thousand rupees, except with the prior approval of the [Joint Commissioner]”*

12. Since the Assessing Officer in the instant case has admittedly not taken prior approval of the JCIT/Addl.CIT before levy of penalty of Rs.30,000/- which is in excess of Rs.10,000/-, he has violated the provisions of section 274(2) of the I.T. Act. Under these circumstances, we are of the considered opinion that due to non- obtaining of prior approval of the JCIT/Add.CIT for levy of penalty in excess of Rs.10,000/- the order passed by the Assessing Officer u/s 271(1)(b) being not in accordance with law is liable to be quashed. We therefore, set aside the order of the learned CIT (A) NFAC and direct the Assessing Officer to cancel the penalty levied by the AO u/s 271(1)(b) of the Act. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed.

13. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 22<sup>nd</sup> February, 2024

<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>VICE-PRESIDENT</b>
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Hyderabad, dated 22<sup>nd</sup> February, 2024

**Vinodan/sps**

Copy to:

S.No	Addresses
1	Invest Smart India (P) Ltd C/o P Murali & Co. CAs, 6-3-655/2/3 Somajiguda, Hyderabad 500082
2	Income Tax Officer Ward 2(1) Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*