

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य  
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 364/Chd/2023  
निर्धारण वर्ष / Assessment Year : 2017-18

M/s Pawan International 1370 Krishna Nagar Civil Lines Ludhiana (Punjab)	बनाम	The ITO, Ward 7(3), Ludhiana
स्थायी लेखा सं./PAN NO: AAJFP6044J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Satish Aggarwal, Advocate  
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 26/02/2024  
उद्घोषणा की तारीख/Date of Pronouncement : 05/03/2024

**आदेश/Order**

**PER VIKRAM SINGH YADAV, A.M. :**

This is an appeal filed by the assessee against the order of the Ld. CIT(A), NFAC, Delhi dt. 05/04/2023 pertaining to Assessment Year 2017-18 wherein the assessee has challenged the sustenance of levy of penalty amounting to Rs. 60,000/-under section 272A(1)(d) of the Act.

2. During the course of hearing, the Ld. AR submitted that the assessee filed its return of income declaring total income of Rs. 2,67,480/- which was selected for scrutiny and thereafter in response to various notices issued by ITO Ward 7(3), Ludhiana, the assessee has made the necessary compliances and thereafter, the assessment was completed under section 143(3) vide order dated 27/12/2019 at the assessed income of Rs. 34,67,480/-

3. It was further submitted that the NFAC, Delhi thereafter issued notice under section 272A(1)(d) r.w.s 274 dt. 27/12/2019 as to why the penalty should

not be imposed for non compliance to the notice(s) issued during the course of assessment proceedings. It was submitted that in the said penalty notice, there is no mention as to which specific notice issued by the AO during the course of assessment proceedings, there was non-compliance on the part of the assessee and how the case of the assessee falls under section 272A(1)(d) of the Act. It was accordingly submitted that there is a clear failure on the part of the NFAC to specify the specific charge against the assessee before levy of the impugned penalty and in absence of a specific charge, the levy of penalty cannot be sustained and same be directed to be set-aside.

4. It was further submitted that only on receiving the impugned penalty order, the assessee came to know about the notices in respect of which NFAC has levied the penalty. In this regard, it was submitted that during the course of assessment proceedings, the assessee has made the necessary compliances to the various notices as apparent from the following details:

Sr.No.	Date of Issuance Notice	Date of Hearing Fixed	Reply Filed Proof Attachment	Remarks
1	02-08-2019 Friday 3.50 PM	13-08-2019 Reply by 11.30 AM	See Annex-I	Notice issued by Sh. Puran Chand Arora ITO Ward 7 (3) LDH
2	10-10-2019 Thursday 1.08 PM	15-10-2019 Reply by 11.00 AM	See Annex-II	Less than 5 days time allowed by Sh. Puran Chand Arora ITO Ludhiana 7(3)
3	04-11-2019 Monday 12.03 PM	11-11-2019 Reply by 11.00AM	See Annex-III	By Sh. Puran Chand Arora ITO 7(3) Ludhiana
4	03-12-2019 Thursday 1.30 PM	05-12-2019 Reply by 11.00 AM		Less Than Two Days Time Allowed by ITO 7(3) Sh. Puran Chand Arora 7(3) Ludhiana
5	20-12-2019 Friday at 9.15 PM	22-12-2019 Reply by 11.00 AM	See Annex-IV	Less Than 2 Days Time Allowed by ITO 7(3) Sh. Puran Chand Arora 7(3)

				Ludhiana
6	22-12-2019 Sunday 1.47 PM	22-12-2019 Reply by 4.00 PM time given to Reply ( 2 Hours & 13 minutes)	See Annex-V	For dated 22/12/19 The Ld. AO Issued 3 Notice in a single day Moreover On That Day It was Sunday Holiday Day

5. It was submitted that from the perusal of the notices, it may also be noted that the assessee was granted less than two days to respond to various notices which is clear violation of the principle of natural justice and in this regard reference was drawn to the various decisions wherein Courts have held that the tax authorities should provide reasonable time to the assessee to respond and furnish the necessary responses in response to the notices in consonance with the principle of natural justice.

6. It was further submitted that the AO issued three notices on 22/12/2019 one after the other and on a day which was a public holiday i.e, Sunday and the assessee was asked to respond on the very same day. It was submitted that the notices were issued at 1.47 P.M and the assessee was asked to respond by 4.00 P.M on the same date. It was submitted that it is a clear case of violation of principle of natural justice where not even two hours have been given to the assessee to respond to the notices.

7. It was further submitted that given the fact that the assessee has substantially complied with the various notices and the assessment has been completed under section 143(3) of the Act, the penalty so levied and confirmed by the Ld. CIT(A), NFAC, Delhi be directed to be deleted. In support, reliance was placed on the decision of Hon'ble Supreme Court in case of Hindustan Steel Ltd. Vs. The State of Orissa, wherein it was held that an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-

criminal proceedings and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. It was further held by the Hon'ble Supreme Court that the penalty will not be imposed merely because it is lawful to do so and the same is a matter of discretion which has to be exercised judicially and on consideration of all the relevant circumstances of the case. It was accordingly submitted that in the instant case, given that the assessee has substantially complied to the various notices issued by the AO from time to time notwithstanding the fact that the assessee was not granted sufficient time to respond of the said notices, the penalty so levied and confirmed by the Ld. CIT(A) be directed to be deleted.

8. Per contra, the Ld. DR submitted that during the course of assessment proceedings, the AO had issued notices under section 142(1) on 02/08/2019, 10/10/2019, 04/11/2019, 03/12/2019, 20/12/2019 and 22/12/2019 asking the assessee to furnish reply within the specified date but the assessee choose not to respond to such notices during the course of assessment proceedings and thereafter the proceedings under section 272A(1)(d) were initiated and notice was issued to the assessee on 27/12/2019 as to why the penalty should not be imposed for non compliance to the above said notices. It was submitted that the assessee did not respond to the said notice and even to the specific show cause notice issued during the course of penalty proceedings and thereafter the NFAC, Delhi went ahead and levied penalty amounting to Rs. 60,000/-.

9. It was submitted that the assessee has failed to establish any reasonable cause for non compliance to the said notices and therefore the NFAC has imposed penalty for each of such defects adding up to penalty of Rs. 60,000/- and which has been rightly confirmed by the Ld. CIT(A).

10. Referring to the finding of the Ld. CIT(A), it was submitted by the Ld. DR that the assessee has been merely stating that it has complied to the various notices, however the said statement has been made without furnishing any relevant documentary evidence in support thereof as to the necessary compliances so made by the assessee. It was submitted that the assessee did not even respond to the penalty notice and even to the two show cause issued by the NFAC and which has been rightly taken into consideration by the Ld. CIT(A) to confirm the levy of penalty under section 272A(1)(d) of the Act. He accordingly supported the order and findings of the Ld. CIT(A).

11. We have heard the rival contentions and perused the material available on the record. Firstly, it is noted that the assessee has in fact responded to the notices dt. 02/08/2019, 10/10/2019, 04/11/2019, 20/12/2019 by furnishing the necessary information/documentation during the course of assessment proceedings and supporting evidences are placed on record and therefore there cannot be any basis for levy of penalty as far as non compliance to the said notices are concerned as the same is clearly not borne out of records. In terms of notices issued on 22/12/2019, we find that there were in fact three notices which were issued on the same date whereby the assessee was asked to comply within a period of two hours and that too on a day which was a public holiday. In this regard, we understand that given that Assessing officer has to complete the assessment proceedings within the limitation period involving number of cases, the Assessing officer may be working on a public holiday beyond the call of duty and calling for the necessary information/documentation and thus, there is an expectation from the assesseees to co-operate and adhere to the notices asking for the necessary information, documentation in order to enable the Assessing officer to complete the assessment proceedings. At the same time, what is essential is that the expectation must meet the test of reasonableness and the assessee be

provided reasonable time to respond to the various notices. In the instant case, it is manifestly clear that the AO for reasons best known to him has issued three notices one after the another on the day which was a public holiday and asking the assessee to respond to the said notices within period of two hours which is clearly not reasonable and in any case, cannot be a basis to press charges as far as the deliberate non-compliance on the part of the assessee. Further considering the fact that substantial compliances have been made by the assessee and the assessment has been completed under section 143(3) of the Act, we find that there is no justifiable basis for levy of penalty u/s 272A(1)(d) of the Act. The penalty so levied is hereby directed to be directed.

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

Order pronounced in the open Court on 05/03/2024.

Sd/-

**आकाश दीप जैन**  
**(AAKASH DEEP JAIN)**  
उपाध्यक्ष / VICE PRESIDENT

Sd/-

**विक्रम सिंह यादव**  
**(VIKRAM SINGH YADAV)**  
लेखा सदस्य/ ACCOUNTANT MEMBER

**AG**

**Date: 05/03/2024**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar