

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC' : NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

**ITA No.3106/DEL/2023  
(Assessment Year: 2012-13)**

Surya Pratap Singh,  
KA-138, Galaxy Ganga,  
Ganga Nagar,  
Meerut – 250 001 (Uttar Pradesh).

vs.

ITO, Ward 2 (5),  
Meerut.

**(PAN : AIAPS1956P)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R.K. Jain, Advocate  
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 29.02.2024  
Date of Order : 06.03.2024

**ORDER**

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated 01.09.2023 for the assessment year 2012-13.

2. The issue raised is against the penalty levied under section 271(1)(b) of the Income-tax Act, 1961 (for short 'the Act') amounting to Rs.20,000/- imposed on the assessee.

3. I have heard both the parties and perused the records. Ld. Counsel for the assessee submitted that in this case notice issued by the AO was not served upon the assessee as there was change in the assessee's address. This

aspect was not sustained by the authorities below. Ld. CIT (A) in his order mentioned that there is nothing on record that change of address of assessee was communicated to the AO or updated on the assessee's e-filing profile. Ld. Counsel of the assessee submitted that assessee's return was also filed on the changed address but the notices were sent to the old address.

4. Upon careful consideration, I am of the opinion that in the interest of justice, penalty in this regard is not sustainable. In this regard, I rely upon the decision of Hindustan Steel Ltd. vs. State of Orissa 83 ITR 26 for the proposition if the assessee's conduct is not found to be contumacious the authority may not levy penalty. In the background of the aforesaid, I set aside the orders of the authorities below and delete the penalty levied.

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

**Order pronounced in the open court on this 6<sup>th</sup> day of March, 2024.**

**Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 6<sup>th</sup> day of March, 2024**

**TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**