

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री मनीष बोराड, लेखा सदस्य एवं डा० एस. सीतालक्ष्मी, न्यायिक सदस्य के समक्ष
BEFORE: SHRI MANISH BORAD, AM & DR. S. SEETHALAKSHMI, JM

आयकर अपील सं./ITA. No. 153/JPR/2024
निर्धारण वर्ष / Assessment Years : 2017-18

Jairaj Singh Solanki 5/63, SFS, Agrawal Farm, Mansarowar, Jaipur.	बनाम Vs.	ITO Ward-2(4), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AWCPS8587N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shrawan Kumar Gupta (Adv.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 27/03/2024
उदघोषणा की तारीख / Date of Pronouncement : 28/03/2024

आदेश / ORDER

PER: MANISH BORAD, AM

This appeal is filed by the assessee aggrieved from the order of the Id. CIT(A), National Faceless Appeal Centre, Delhi dated 24.01.2024 [Here in after referred as "CIT(A)/NFAC"] for the assessment year 2017-18, which in turn arise from the order dated 05.08.2021 passed under section 272A(1(d) of the Income Tax Act, [Here in after referred as "Act"] by the AO.

2. Sole grievance of the assessee raised in the grounds of

appeal is against the levy of penalty of Rs. 10,000/- u/s 272A(1)(d) of the Act levied by the Assessing Officer for not complying to the notice u/s 142(1) of the Act.

3. At the outset, Id. AR of the assessee submitted that the assessee earns his living by working as a taxi driver and he is an illiterate person. The assessee had furnished the return of income on 15.08.2017 declaring income of Rs. 2,50,040/- and during the course of limited scrutiny proceedings, the assessee has responded on two occasions but his submission has not been considered. However, the penalty has been levied for not complying with another show cause notice for which the assessee was not at all aware and thus prayed that the assessee deserves immunity from levy of penalty by virtue of section 273B of the Act.

4. On the other hand, Departmental Representative vehemently supported the order of the Id. CIT(A).

5. We have heard the rival contentions, perused the material placed on record before us. The penalty of Rs. 10,000/- has been levied u/s 272A(1)(d) of the Act for non compliance to the notice issued u/s 142(1) of the Act dated 03.12.2019. We observe that assessee filed its return of income u/s 139(1) of the Act for A.Y.

2017-18 on 15.08.2017 declaring income of Rs. 2,50,040/- and is earning income from running taxi/car hiring business. After the case being selected for limited scrutiny through CASS for the reason of, "credit card payments", notices u/s 143(2) and 142(1) of the Act during served upon the assessee. The Revenue authorities alleged that the assessee has failed to appear for the final show cause notice issued u/s 142(1) of the Act on 03.12.2019. We however, notice that in the present case the assessee has filed certain details during the assessment proceedings. Our attention was drawn to the various notices by e-proceedings. We find that the assessee filed details online on 10.06.2019 and 02.07.2019 and as alleged by the Id. Counsel for the assessee in its written submission that the Id. AO has not considered these details before completing the assessment proceedings. Therefore, it is an admitted fact that the assessee had made certain compliance by filing the details but on one occasion he has not appeared and for such non appearance the reason mentioned is that the assessee was not aware about the date of hearing fixed by notice dated 03.12.2019. Considering the fact that the assessee is a taxi driver and has to work regularly for earning bread and butter and also the assessee not being well educated and therefore, not aware of

the technical charges recently introduced in the Income Tax e-proceedings, it is quite possible that without having any mensrea the assessee failed to appear.

6. Under these facts and circumstances of the case, in our considered view the assessee deserves immunity from levy of alleged penalty by u/s 273B of the Act, which provides that no penalty shall be imposed for failure referred in the said provisions which includes the alleged failure, if the assessee proves that there was reasonable cause for the said failure. We therefore, observing that the assessee had a reasonable cause for the said failure, set aside the finding of Id. CIT(A) and delete the impugned penalty of Rs. 10,000/- levied u/s 272A(1)(d) of the Act.

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

Order pronounced in the open Court on 28/03/2024.

Sd/-

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

(मनीष बोराड)
(Manish Borad)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28/03/2024

*Santosh

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

1. अपीलार्थी / The Appellant- Jairaj Singh Solanki, Jaipur.

2. प्रत्यर्थी / The Respondent- ITO, Ward-2(4), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 153/JPR/2024 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar