

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SMT RENU JAUHARI, ACCOUNTANT MEMBER**

**ITA No.4003/Mum/2023  
(Assessment Year :2015-16)**

**&**

**ITA No.4005/Mum/2023  
(Assessment Year :2014-15)**

|                                                                                                                                                                                                 |     |                                                                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|---------------------------------------------------------------------------------------------------------------------------------------------------|
| M/s.Aadinath Securities Pvt Ltd.<br>C/o. CA Himanshu Gandhi,<br>16 <sup>th</sup> Floor<br>D Wing<br>Trade World<br>Kamala Mills Compound,<br>Senapati Bapat Marg,<br>Lower Parel, Mumbai-400013 | Vs. | Income Tax Officer-<br>Word 4(1)(3)<br>Mumbai<br>Aayakar Bhavan<br>Maharshi Karve<br>Road,<br>New Marine Lines<br>Churchgate,<br>Mumbai - 400 020 |
| <b>PAN/GIR No.AAFCA3411P</b>                                                                                                                                                                    |     |                                                                                                                                                   |
| <b>(Appellant)</b>                                                                                                                                                                              | ..  | <b>(Respondent)</b>                                                                                                                               |

|                              |                        |
|------------------------------|------------------------|
| Assessee by                  | Shri Himanshu Gandhi   |
| Revenue by                   | Shri Manoj Kumar Sinha |
| <b>Date of Hearing</b>       | <b>18/04/2024</b>      |
| <b>Date of Pronouncement</b> | <b>24/04/2024</b>      |

**आदेश / O R D E R**

**PER BENCH:**

The aforesaid appeals have been filed by the assessee against separate impugned order of even date 27/09/2023

passed by NFAC, Delhi in relation to the penalty proceedings u/s. 271(1)(b) for the A.Ys. 2014-15 & 2015-16.

2. In both the appeals assessee is aggrieved by levy of penalty of Rs.30,000/- levied by the ld. AO u/s. 271(1)(b) for non-compliance of 3 notices u/s.142(1).

3. The brief facts are that a notice u/s.148 was issued to the assessee vide notice dated 31/03/2021, based on the information that assessee has entered into fictitious transaction through M/s. Wellworth Shares & Stock Broking Ltd. for sum value of Rs.1,27,52,200/- in the A.Y.2014-15 and Rs.1,45,000/- in A.Y. 2015-16. The allegation was that assessee had shown fictitious profit in equity derivative trading and assessee has failed to offer this income or has not disclosed this transaction. In response to notice u/s.148 assessee has filed its return of income. During the course of assessment proceedings, a notice u/s. 142(1) was issued on 26/11/2021 to submit the response by 13/12/2021 which was served through e-mail. Since there was no reply from the assessee and another reminder notice was sent u/s. 142(1) on 24/02/2021 to make the compliance which again was not responded; and *lastly*, another opportunity to inform in notice u/s.142(1) was issued and served on 27/01/2022. Again the said notice remained uncomplied with. Finally, the ld. AO issued a final show-cause notice to the assessee. The assessee in response to final show-cause notice, filed its reply on 24/02/2022 which has been incorporated in the assessment order and based on this reply assessment has been completed and also assessee was heard through video

conferencing and filed all the requisite details and documents as was required by the ld. AO in all the notices. The assessment was accordingly completed u/s.147 r.w.s. 144B by making the addition of Rs.1,27,52,200/- u/s.68 and Rs.1,27,522/- u/s.69A for A.Y.2014-15; and Rs.1,45,000/- u/s.68 and Rs.1,450/- u/s. 69A for A.Y.2015-16. Ld. AO has now levied penalty for non-compliance of notices u/s. 142(1), levying Rs.30,000/- for non-compliance of three notices.

4. Ld. CIT (A) too has confirmed the said penalty on the ground that assessee had failed to comply with the statutory notices issued on various dates during assessment proceedings and nowhere assessee had denied that notices were not served upon him nor there was any plausible explanation for non-compliance of notice.

5. Before us ld. Counsel submitted that when assessee was issued a notice u/s. 143(2), assessee has filed objection that assessee's case has been reopened on a wrong facts and the transaction which has been stated in the 'reasons recorded' have already been offered to tax and therefore, there was no escapement of income. Further, assessee had also filed reply and details as and when required. The chronology of events and the remarks for each date of compliance and the replies filed before the AO during the course of assessment proceedings as highlighted before the ld. CIT (A) are reproduced hereunder:-

| Date       | Event             | Reply Date | Remark              |
|------------|-------------------|------------|---------------------|
| 31.03.2021 | Notice u/s.148 of | 31.03.2021 | Return was filed in |

|            |                                                                                                                                                                                                                                                                                                                                                                     |                               |                                                                                                                                                                                                                                                                                                                |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            | Income Tax was issued                                                                                                                                                                                                                                                                                                                                               |                               | response to Notice issued u/s.148.                                                                                                                                                                                                                                                                             |
| 28.06.2021 | Notice u/s 143(2) of Income Tax Act, 1961 were issued and reason Recorded for reopening were provided. The case was reopened on the information from ITD System that assessee had entered into fictitious transactions through M/s Wellworth Shares & Stock Broking Ltd. amount Rs.145000/- and assessee failed to offer this income and income remain undisclosed. | 22.03.2022                    | Assessee filed objection and brought to the knowledge of Ld. AO that case is reopen on wrong facts and Income from transaction executed through M/s Latin Manharlal Securities Pvt Ltd. Rs. 1272701 9/- were already offered for tax. And when no escapement, then provision of section 148 cannot be invoked. |
| 26.11.2021 | Notice u/s 142(1) of Income Tax Act, 1961 and various details with Ledger of M/s Wellworth Shares & Stock Broking Ltd. were also called for.                                                                                                                                                                                                                        | 24.02.2022<br>&<br>22.03.2022 | Appellant filed all the details on 24.02.2022 and on 22.03,2022 brought to knowledge of Ld. AO that details were already filed on 24.02.2022.                                                                                                                                                                  |
| 24.12.2021 | Notice u/s 142(1) of Income Tax Act, 1961 was issued for calling same details as per Notice dated 26.11.2021.                                                                                                                                                                                                                                                       |                               | No Compliance                                                                                                                                                                                                                                                                                                  |
| 17.01.2022 | Notice u/s 142(1) of Income Tax Act, 1961 was issued for calling same details as per Notice dated                                                                                                                                                                                                                                                                   |                               | No Compliance                                                                                                                                                                                                                                                                                                  |

|            |                              |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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|            | 26.11.2021.                  |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 24.02.2022 | Show Cause Notice was issued | 23.03.2022 | <p>Detailed reply filed in response to show cause notice and brought to knowledge of Ld. AO that income from transaction done through M/s Latin Manharlal Securities Pvt. Ltd. were already offered for taxed and part of profit &amp; loss account. Further if addition will made then it will amount to double taxation. Appellant also filed global report and sample contract note also.</p> <p>Further, appellant had submitted the MCA Company master data of M/s Latin Manharlal Securities Pvt Ltd and brought to knowledge of Ld. AO that as per notice statement of Shri Sanjay Kumar Periwal and Shri Harshvardhan ayan were attached with notice. However, no such statement was attached with the notice. Further, how these people are related to our Broker Latin Manharlal Securities Pvt Ltd were also not established. A non-related person statement cannot</p> |
| 13.03.2022 | Show Cause Notice was issued |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

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|------------|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            |                                | <p>be relied against the assessee without providing the copy of statement and opportunity of cross examination. Therefore, appellant requested Ld. AO to kindly provide details, documents, information or statement on which basis Ld. AO state that transactions are fictitious in nature.</p> <p>Further, Ld. AO allegation that income from above transaction is not offered for tax is factually incorrect. Assessee had offered for tax the gain of Rs. 1,27,27,019/- earned from derivation transaction executed through M/s Latin Manharlal Securities Pvt Ltd. Therefore, appellant request Id. AO to kindly drop the proposed addition under section 68 &amp; 69A of Income Tax Act, 1961 and oblige. All the above counters were raised during Video conferencing on 23.03.2022.</p> |
| 23.03.2022 | Video Conferencing taken place |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

|            |                                                                                                                                                                                                                                   |  |                                                                                                                                                                          |
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| 25.03.2022 | Assessment Order was passed and addition of Rs. 1,27,52,200/- were added under section 68 of Income Tax Act, 1961 & Rs. 1,27,522/- on assumption that assessee had paid commission for obtaining the profit of Rs. 1,27,52,200/-. |  | As per the assessee, the Ld. AO did not go through the submission and fact that profit is already offered for tax and made addition. This tantamount to Double Taxation. |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

6. Thus, according to ld. Counsel assessee had filed reply in response to various show-cause notices and barring one or two notices, assessee had made due compliance and filed all the details including participating in the video conferencing offered by the ld. AO at the request of the assessee. Ld. Counsel further pointed out that before the authorities below assessee had duly submitted that there was delay in response to the notice and not that notices had not been responded. Reason for delay was stated as under:-

- a) Time taken for retrieving old data
- b) Due to heavy losses and small-scale business operation after COVID, office was not regular.
- c) Appellant had no employee and only old-age director's was handling all the affairs of appellant. They are not familiar with online technicalities.
- d) But, later on with help of CA Himanshu Gandhi all details were filed and duly acknowledge by Ld. AO in assessment order.
- e) Even, appellant appeared in Video Conferencing also which is mentioned to Page No. 16 of Assessment order also.

7. Thus, he submitted that it is not an issue of non-compliance of notice but delayed response to the said notices.

8. On the other hand, ld. DR pointed out that the ld. AO had duly mentioned about the issuance of notices, date fixed for compliance and non-compliance made by the assessee on all such notices and therefore, the ld. AO has rightly levied the penalty for non-compliance of such notices and it is not necessary that assessment should have been completed u/s.144.

9. We have heard submissions of the parties and also perused the relevant record placed before us. From the perusal of the chronology of events which is also evident from the facts and material on record and also as discussed in the impugned orders, we find that the penalty has been levied for non-compliance of three notices u/s.142(1) dated 26/11/2021, 24/12/2021 and 17/01/2022. Although it is correct that assessee had not complied the date fixed in the notice u/s. 142(1), however, the assessee had filed all the details in response to the said show-cause notice on 24/02/2022 and also on 20/03/2022. Further, in response to show-cause notice also assessee had filed the details and also brought to his knowledge that all the transactions which has been alleged had already been offered to tax and part of profit and loss account. The remarks in the chronology of events clearly justify the compliance made by the assessee before the ld. AO. Thus, it is not a case of failure to comply with the notice, albeit there is failure to respond on the date mentioned in the notice. Delay in

late response have been explained that; *firstly*, it was an old matter and assessee took time for retrieving the old date; *secondly*, assessee was having heavy losses due to small scale business operation after Covid and during the Covid period office of the assessee was also not opened. Apart from that, assessee has no employee and director was old and was the only person who was handling the affairs of the assessee company and was not aware of any online technicalities of notices sent through online. It was later on when assessee sought for assistance of a Chartered Accountant; the assessee compiled and filed all the details before the ld. AO which has been duly acknowledged. Thus, it cannot be held that assessee has purposefully defied the compliance of notices u/s. 142(1) and there was sufficient and reasonable cause in filing the details belatedly. Accordingly, under these facts and circumstances and looking for the grounds for delay in filing the response and the details in compliance of the notices, we do not find that it is a fit case to levy penalty and accordingly, in the interest of justice, the penalty levied by the ld. AO is deleted for the A.Y.2014-15 and A.Y.2015-16. Accordingly, both the appeals of the assessee are allowed.

**10. In the result, both the appeals of the assessee are allowed.**

Order pronounced on 24<sup>th</sup> April, 2024.

**Sd/-**  
**(RENU JAUHARI)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 24/04/2024  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**