

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A Nos.2971 to 2977/Del/2023

निर्धारणवर्ष/Assessment Years: 2015-16 to 2021-22

Salim SO Roshan Din, C/o Sh. Tejmohan Singh, Advocate #527, Sector 10-D, Chandigarh. PAN No.CYJPS4176A	बनाम Vs.	DCIT Central Circle, Karnal, Haryana.
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

निर्धारितकीओरसे /Assessee by	Shri Tej Mohan Singh, Adv.
राजस्वकीओरसे /Revenue by	Shri Om Prakash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	25.01.2024
उद्घोषणाकीतारीख/Pronouncement on	23.04.2024

आदेश /O R D E R

All these appeals are filed by the assessee against common order of the Ld.CIT(Appeals)-3, Gurgaon dated 29.08.2023 in sustaining the penalty levied u/s 271(1)(b)/272A(1)(d) of the Act for non-compliance of notice/notices issued u/s 142(1)/143(2) of the Act.

2. Ld. Counsel for the assessee, at the outset, submits that the Assessing Officer levied penalty u/s 271(1)(b)/272A(1)(d) of the Act for non-compliance of notices issued u/s 142/143(2) of the Act. The Ld. Counsel for the assessee, at the outset, submits that assessee

was under custody as under trial in Central Jail, Hisar during the period from 28.03.2021 to 06.08.2022 and, therefore, the assessee could not respond to the notices issued by the Assessing Officer. Ld. Counsel submits that since the assessee is in Central Jail as under trial the notices issued by the Assessing Officer could not have been served and, therefore, there is no justification for levying penalty for non-compliance.

3. Ld. DR supported the orders of the authorities below.

4. Heard rival submissions, perused the orders of the authorities below.

5. On perusal of the custody certificate issued by the Deputy Superintendent, Central Jail, Hisar it is very much clear that the assessee was under custody as under trial for the period from 28.03.2021 to 06.08.2021. In the circumstances, the notices issued by the AO u/s 142(1)/143(2) of the Act could not have been served on the assessee. From the perusal of the penalty orders passed u/s 271(1)(b)/272A(1)(d) of the Act it is noticed that penalty was levied for non-compliance of the statutory notice issued u/s 142(1) dated 25.02.2022 for the assessment years 2015-16 to 2021-22. The notice dated 25.02.2022 issued u/s 142(1) could not have been served on

the assessee as he was under the custody from 28.03.2021 to 06.08.2022, therefore, the question of levy of penalty for non-compliance does not arise. Even otherwise the assessee is prevented from sufficient cause in not responding to the notice issued u/s 142(1) dated 25.02.2022. Thus, the AO is directed to delete the penalty levied u/s 271(1)(b)/272A(1)(d) of the Act for the assessment years 2015-16 to 2021-22. The grounds raised by the assessee are allowed.

6. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 23/04/2024

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 23.04.2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi