

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

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.779/Del/2023
निर्धारणवर्ष/Assessment Year: 2012-13**

| | | |
|---|--------------------|--|
| Sumit Maheshwari, 94-95, Chanakya Puri, Meerut, Uttar Pradesh. PAN No.AGHPM0003A | <u>बनाम</u> Vs. | ITO, Ward-1(2)(5), Meerut, Uttar Pradesh. |
| अपीलार्थी Appellant | | प्रत्यर्थी/Respondent |

| | |
|--------------------|-----------------------------------|
| Assessee by | None |
| Revenue by | Shri Vivek Vardhan, Sr. DR |

| | |
|----------------------------------|------------|
| सुनवाईकीतारीख/ Date of hearing: | 30.01.2024 |
| उद्घोषणाकीतारीख/Pronouncement on | 24.04.2024 |

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the order of the Ld.CIT(Appeals)-NFAC, Delhi dated 18.01.2023 for the AY 2012-13 in sustaining the penalty levied u/s 271(1)(b) of the Act for non-compliance of the notice issued u/s 142(1) of the Act dated 31.07.2019. In spite of issue of notice, none appeared on behalf of assessee nor any adjournment was sought. Therefore, we proceed

to dispose of this appeal on hearing the Ld. DR. On perusal of the record, we observe that the assessee filed brief synopsis which reads as under: -

SYNOPSIS

“Before the INCOME TAX APPEALATE TRIBUNAL, NEW DELHI-G BENCH

In the Matter of SUMIT MAHESHWARI, Meerut -PAN: AGHPM0003A (Appellant/Assessee) - V/S - INCOME TAX OFFICER, Ward 2(5), MEERUT.

Order dt. 25.08.2021 u/s 271(1)(b) of the Income Tax act 1961.

PAN: AGHPM0003A

Asst. Year: 2012-2013

SUBMISSION For: Appeal No., ITA NO: 779/DEL/2023 Fixed for hearing on 28.08.2023

1) 148 Notice and all subsequent proceedings completed Ex-party For AY 2012- 2013 on the old Address 31, Chanakyapuri, Meerut. Penalty u/s 271(1)(b) of Rs.10000/- also imposed for non-compliance. All notices were not received by assessee.

2) Assessee not received any notice from Income tax office due to shifted to new address (94-95, Chanakayapuri Meerut) since long. ITR were also filed on new address. ITR AY 2011-12 & 2012-2013 is attached.

3) No effort was made to serve the notice on assessee.

4) Assessee filed appeal against 271(1)(b) penalty of Rs.10000/-, but not relief by CIT(A).

5) Hence without service of notice u/s 271(1)(b) penalty is not justified. Because new address was

available with Assessing officer, but no communication made on new address.

6) The assessee has relied on the judgement of JURISDICTIONAL ALLAHABAD HIGH COURT IN THE CASE OF SURESH KUMAR SHEETLANI VS. ITO - ITA NO. 413 OF 2011 DATED 14.08.2018 ,wherein it was held "Notice served at the wrong address renders reassessment proceedings invalid". Full text of the judgment is enclosed. Our issue is squarely covered under this judgement."

2. On perusal of the penalty order passed u/s 271(1)(b) of the Act, we noticed that penalty was levied for non-compliance of notice u/s 142(1) of the Act dated 31.07.2019. It is the contention of the assessee that none of the notices including notice u/s 148 of the Act were not served on the assessee as they were sent to old address even though the assessee filed returns for the assessment year under consideration and also for the immediately preceding assessment year i.e. 2011-12 mentioning the new address i.e. 94-95, Chanakyapuri, Meerut. On perusal of the order of the Ld.CIT(A), we observe that penalty was sustained for the reason that the assessee did not inform the Assessing Officer about change in address. We are not in agreement with the Ld.CIT(A)-NFAC as the assessee filed returns for the assessment years 2011-12 & 2012-13 mentioning the new address i.e. 94-95, Chanakyapuri, Meerut. However, the assessment was completed u/s 144/147 of the Act dated 12.12.2019. We further observe that the AO passed penalty order u/s 271(1)(b)

of the Act on the new address i.e. 94-95, Chanakyapuri, Meerut. This goes to show that the new address of the assessee is in the knowledge of the Department. We further observe that there is no finding in the penalty order whether the notice dated 31.07.2019 issued u/s 142(1) of the Act was either served on the assessee. Even the Ld.CIT(A) also did not give a finding as to whether the notice was served on the assessee. In the circumstances, it cannot be presumed that the notice was served on the assessee and the assessee did not comply to such notice. Thus, this is not a case for levy of penalty for non-compliance. Thus, we delete the penalty u/s 271(1)(b) of the Act.

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

Order pronounced in the open court on 24/04/2024

**Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

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

Dated: 24/04/2024

**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