

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA Nos. 120 & 121/Bang/2024
Assessment years : 2013-14 & 2014-15

Panati Vikaramadeva Reddy, 8, Behind Sandhya Tenant, Venkateshwara Layout, Madiwala, Bangalore – 560 068. <b>PAN : ABOPR 2086C</b>	Vs.	The Assistant Commissioner of Income Tax, Circle 4[3][1], Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Narendra Sharma, Advocate
Respondent by	:	Shri Subramanian S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	14.03.2024
Date of Pronouncement	:	14.03.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

These two appeals are filed by the assessee against the separate orders dated 28.12.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AYs 2013-14 & 2014-15. Since the common issue involved in these appeals is levy of penalty u/s. 271(1)(b) of the Act, they are heard together and common order is passed.

2. The brief facts of the case are that the assessee is an individual carrying on business of management of municipal solid waste and has secured a contract from BBMP. The assessee has maintained books of accounts that are subject to audit u/s. 44AB of the Act. For AY 2013-14 the assessee had a turnover of Rs.8,36,68,461 and other income. The assessee offered income declaring taxable income of Rs.60,79,338 and return was filed on 27.09.2014 along with audit report in Form 3CB & 3CD dated 28.09.2013.

3. The case of the assessee was reopened based on a search u/s. 132 conducted on 09.10.2014 in the case of P. Gopinath Reddy in which the appellant was a keyman and declared in the statement u/s. 131 that he has inflated the expenses from material, fuel, vehicle repairs, maintenance, etc. and also furnished inaccurate income from house property and thereafter declared undisclosed income for AY 2013-14 of Rs.17,09,973. The details called for were not provided by the assessee within stipulated time. Accordingly notice u/s 148 was issued to the assessee and in response the assessee did not file return of income. Notices u/s. 142(1) were issued on 12.11.2021, 16.12.2021 & 11.1.2021 for which there was no response from assessee's side. In response to show cause notice dated 19.01.2022 and notice u/s. 142(1) 11.03.2022, the assessee filed reply on various dates. By notice u/s. 142(1) dated 21.03.2022, the assessee was asked to produce bills of expenses related to material, fuel, vehicle repairs maintenance, etc., however the assessee informed that he is in process of gathering material since it is old matter and requested for one week's time. The

AO however noted that the assessee failed to respond to the various notices u/s. 142(1) and completed assessment on 28.03.2022 u/s. 147 r.w.s. 144B of the Act.

4. Penalty proceedings u/s. 274 r.w.s. 271(1)(b) were also initiated by show cause notice dated 28.03.2022. Another show cause notice dated 26.8.2022 was issued to upload submission as per mandate of Faceless Penalty Scheme and that penalty initiated u/s. 271(1)(b) being a technical penalty it cannot be kept in abeyance, though assessee filed appeal before the CIT(A).

5. In response to the penalty notice, the assessee filed the following reply in the e-filing portal on 19.4.2022:-

“ I am in receipt of the notice cited above calling upon me to show cause as to why penalty should not be levied u/s. 271[1][b] of the aforesaid assessment year and in this connection, I wish to submit for your Honour’s kind consideration and favourable orders as under :-

1. I have not committed any default actionable u/s. 271[1][b] of the Act and consequently, it is prayed that, the penalty proceedings initiated may please be dropped.

2. Further aggrieved by the order of Assessment for the aforesaid assessment year, I have e-filed an appeal before the Hon'ble Commissioner of Income-tax [Appeals], National Faceless Appeal Centre, DELHI. Having regard to the merits of the case, I am confident of succeeding in the aforesaid appeal before the Hon'ble C.I.T.[A]. A copy of the acknowledgement for having e-filed the appeal is enclosed herewith for your Honour's ready reference.

3. In view of the above facts, I request your Honour to take a lenient and sympathetic view in respect of levying of penalty U/s.

271[1][b] of the Income-tax Act, 1961 and request your Honour to kindly drop the proceedings or to keep it in abeyance till the disposal of the appeal by the Hon'ble C.I.T.[A].

4. If a different view is taken in the matter, I request your Honour to kindly afford me one more opportunity to file a detailed reply.

6. After the aforesaid reply was filed, it appears that the penalty proceedings were transferred to the jurisdictional A.O., i.e., the learned ACIT, Circle -4(3) (1), Bangalore. It is stated that another notice dated 26/08/2022 was issued by the said jurisdictional A.O. in connection with the penalty proceedings and no reply was filed by the appellant. However, the said notice was also served only on the e-filing portal and the appellant did not receive any physical copy of the said notice. Under these circumstances, the learned A.O. has observed in the penalty order that no reply was filed by the appellant and thereafter, she proceeded to impose the penalty u/s. 271[1] [b] of the Act on 15/09/2022 levying a penalty of Rs. 30,000/- for the default in responding to the following notices:-

- [a] Notice issued u/s. 142[1] dated 12/11/2021
- [b] Notice issued u/s. 142[1] dated 16/12/2021
- [c] Notice issued u/s. 142[1] dated 10/01/2022”

6. The AO noted from the reply of the assessee is unable to establish that there was reasonable cause for not complying notices u/s. 142(1) in terms of section 273B. Thereafter relying on the following judgments the AO imposed penalty u/s. 271(1)(b) of the Act by order dated 15.9.222 for non-compliance of notices u/s. 142(1) dated 12.11.2021, 16.12.2021 and 11.1.2022:-

- Jaysons Infrastructures India Private Limited vs ITO [TS-5873-ITAT-2017( BANGALORE)]-O
- Earthmoving Equipment Service Corporation vs DCIT[2017] 84 txmann.com51 (Mumbai- Trib.)/(2017)
- Mahesh M Gandhi vs ACIT[ TS-5465-ITAT-2017(MUMBAI)-O]

7. Aggrieved by the above order, the assessee filed appeal before the First Appellate Authority (FAA) and submitted as under:-

“ 8. It is submitted that the appellant was prevented by reasonable cause in not responding to the above notices issued in course of the assessment proceedings. As submitted, the appellant is not very conversant with the electronic notices issued by the Department on the e-filing portal. Furthermore, the appellant has complied with the notices issued after it came to his knowledge. It has to also be appreciated that there is a huge change in circumstances after Covid 19 pandemic and many of the appellant's staff members have left services or were working remotely and as a result there was a complete dislocation of the manner in which the appellant was carrying on business. Under these circumstances, the learned A.O. ought to have exercised his discretion and refrained from imposing penalty on the appellant.

Hence this appeal which may kindly be allowed for the advancement of substantial cause of justice.”

8. The FAA issued notices on 11.08.2023 and 20.12.2023 and noted that there was no compliance or request for adjournment from the assessee. Therefore, the FAA after referring to the detailed order of the AO, dismissed the appeal of the assessee. Against this, the assessee is in appeal before the ITAT.

9. The Id. AR reiterated the submissions made before the AO and also submitted that the FAA did not allow proper opportunity to the assessee for representing his case. He submitted that during the period of notice issued by the AO u/s. 142(1), it was a Covid period and assessee is a contractor and was not well versed in the e-portal of the income tax department for communication. Therefore notices were unresponded. There was no malafide intention of the assessee. When

the assessee came to know of the notice, he filed return of income and copy of reasons was also supplied and copy of statement u/s. 131 was also obtained by the assessee.

10. The ld. DR relied on the orders of lower authorities and submitted that assessee's turnover is more than Rs.8.00 crores and therefore in that scenario it cannot be said that assessee is not well versed in e-communication. The assessee filed return only when notice was issued u/s. 144 for making best judgment assessment. Before it, he did not bother to pursue the notices issued earlier. It clearly shows that the assessee is a habitual defaulter and he was disrespecting the income-tax proceedings in his case. He further submitted that the assessee failed to demonstrate any reasonable cause for not complying notices u/s. 142(1) of the Act during the reassessment proceedings. Before the CIT(Appeals) he could have furnished reasonable cause for not complying the notices. After passing the penalty order, he filed the appeal before the CIT(Appeals), which shows that the assessee was well aware of the income tax proceedings. His books of accounts are audited by CA and tax auditor has issued report in Form 3CB and 3CD. The assessee filed e-return and the onus is on the assessee to substantiate as to why penalty should not be levied and the assessee failed to furnish genuine hardship which prevented him from complying the provisions of section 142(1). The assessee also filed documents at the fag end of the completion of assessment period, which shows that the intention of the assessee is to procrastinate the assessment proceedings till fag end of period of limitation so that the

AO is left with very little time to examine the issue in detail. Such an act of the assessee tantamounts to causing obstruction in discharge of the duty of the AO. The core work of the AO is to scrutinise the financials of the assessee and arrive at the correct income to ensure that correct taxes are collected for the Govt. By not adhering to the statutory notices, the assessee has prevented the Officer from discharging his duty as envisaged under the Act. He further submitted that sufficient opportunity was given by the Id. FAA therefore the ground taken that assessee was not provided proper opportunity to represent his case is not correct.

11. Considering the rival submissions, we note that the case was reopened u/s 148/147 on the basis of search conducted and statements recorded. The assessee was issued notices u/s. 142(1) on the dates mentioned above. However, all these notices were not complied and the assessee complied only after show cause notice u/s. 144 dated 19.01.2022 by filing return of income on 25.01.2022. The AO also asked details vide notice u/s. 142(1) dated 23.03.2022 which was also not complied by the assessee. The books of account have been audited and assessee filed tax audit report in Form 3CB and 3CD. During the penalty proceedings u/s. 271(1)(b), the assessee filed reply on 19.04.2022 which is casual and not explaining the reasonable cause as per section 273B for not imposing penalty. In the reasons submitted by the assessee which is extracted above, we do not find that there is any reasonable cause demonstrated by the assessee for failure to comply with the statutory notices which is primary requirement as per section

273B for condoning the imposing the penalty. We note that the two notices issued by the Id. FAA was also not responded. During the course of hearing before us also the Id. AR could not demonstrate any reasonable cause. He merely reiterated the submissions made before the lower authorities. We also do not accept that the assessee is not well versed with electronic means of communication since assessee's turnover is more than Rs.8.00 crores. We find substance in the submissions of the Id. DR. In such scenario, we confirm the penalty for both the assessment years on similar facts. A copy of this order be placed in the respective case files.

12. In the result, the appeals of the assessee are dismissed.

Pronounced in the open court through virtual hearing on this 14<sup>th</sup> day of March, 2024.

Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER

Bangalore,  
Dated, the 14<sup>th</sup> March, 2024.

*/Desai S Murthy/*

Sd/-  
(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.