

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER****ITA No.389/KOL/2024
Assessment Year: 2017-18**

Roomle Das 2/1, S. L. Chatterjee Street, Nimta, Kolkata-700049. (PAN: BFZPD1491R)	Vs.	Income Tax Officer, Ward- 50(4), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri P. J. Bhide, AR
Respondent by : Shri Bibekananda Madhu, JCIT, Sr. DR

Date of Hearing : 09.05.2024
Date of Pronouncement : 14.05.2024

ORDER**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "the Ld. CIT(A)" passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2017-18 vide Appeal No. ITBA/NFAC/S/250/2023-24/1059204448(1) dated 29.12.2023.

2. Sole ground involved in this appeal of the assessee is against the order of Ld. CIT(A) confirming the penalty of Rs. 10,000/- imposed by the Ld. AO u/s. 272A(1)(d) of the Act. The grounds of appeal raised by the assessee are reproduced as under:

“1. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) erred in confirming the penalty of Rs.10,000/- imposed by the Assessing Officer u/s. 272A(1)(D) of the Income Tax Act, 1961.

2. That the Ld. CIT(Appeals) ought not to have passed such order without disposing the appeal preferred by the Appellant against the assessment order itself.

3. That the order passed by the Ld. CIT(Appeals) on 29.12.2023 is bad in law.

4. That the Appellant craves leave to submit further grounds and to amend, alter or otherwise modify the grounds already taken, if necessary, before or at the time of hearing of the appeal.”

4. Ground No. 4 is general in nature and does not require any adjudication.

5. Brief facts of the case are that the assessee is an individual and derives income from business. The Ld. AO completed the assessment on 24.12.2019 u/s. 144 of the Act and assessed the total income of the assessee at Rs.31,46,690/- by making two additions of Rs.7,70,850/- under the head business and profession and Rs.14,90,000/- under the head unexplained money u/s. 69A of the Act. The Ld. AO also passed an order on 30.12.2021 imposing penalty of Rs.10,000/- u/s. 272A(1)(d) of the Act on the purported failure of the assessee to comply with the notice u/s. 142(1) dated 01.08.2019. The assessee preferred appeal before the Ld. CIT(A), who confirmed the action of the Ld. AO. Aggrieved, the assessee is in appeal before the Tribunal.

6. Rival contentions have been heard and the material available on record has been perused. As is mentioned in the statement of facts and submission made at the time of hearing by the Ld. AR, the compliance could not be made as the aforesaid notice was not received by the assessee and she could not comply with the same. It is further stated that the above penalty order has been passed by the Ld. AO of the rank of the ITO without obtaining approval of the Jt. Commissioner of Income Tax and the penalty order does not mention or specify obtaining such prior approval. This contention is not correct as in sub-section (2) of

section 274, it is stipulated that no order imposing penalty u/s. XXI shall be made by the AO where the penalty **exceeds** Rs.10,000/-, except with the prior approval of the Joint Commissioner of Income Tax and since the penalty imposed does not exceed Rs.10,000/- and was imposed at Rs.10,000/-, therefore, there was no necessity of seeking any approval of the Joint Commissioner.

The Ld. AO imposed a penalty of Rs.10,000/- for the purported default of non-compliance of notice u/s. 142(1) of the Act dated 01.08.2019 and imposed the penalty of Rs. 10,000/-. Before the Ld. CIT(A), there was no representation on behalf of the assessee. Since the penalty proceeding u/s. 272A(1)(d) of the Act does not relate to quantum of assessed income nor is it dependent upon the assessment made, as the default for non-compliance of notices are separate defaults for which penalty can be imposed without awaiting the decision in the quantum appeal, hence, ground nos. 2 & 3 of the appeal are dismissed.

7. However, as regards ground no. 1, it is observed that the following notices were issued to the assessee:

Sl. No.	Section	Date of issue of notice	Remarks
1.	143(2)	14.08.2018	Non-compliance
2.	142(1)	01.08.2019	Non-compliance
3.	Questionnaire	19.08.2019	Non-compliance
4.	Final show cause notice	01.12.2019	Non-compliance
5.	Order u/s. 144	24.12.2019	

In the penalty order, the Ld. AO has examined the Form No. 35 filed before the Ld. CIT(A) and noticed that no ground has been raised by the assessee against initiation of penalty proceeding u/s. 272A(1)(d) of the Act. Therefore, he was of the view that it could not be understood as to how the assessee was trying to keep the penalty proceeding in abeyance till the disposal of the appeal by the Ld. CIT(A), when this ground has not been agitated before the Ld. CIT(A) and on this basis he prayed to

conclude that the assessee had failed to comply with the notice issued u/s. 142 of the Act for which no cogent reason/justification was furnished by the assessee in the penalty proceedings. After reproducing the contents of section 272A(1)(d), penalty of Rs.10,000/- has been imposed.

9. As is observed above, there were four defaults by the assessee but penalty for only one default has been imposed, thereby implying that other defaults had been condoned. The assessment order has been passed on 24.12.2019. As per the provision of section 272A(1)(d) of the Act, the assessee was liable for penalty for each such default or failure and apparently, the Ld. AO has condoned the default relating to notice u/s 143(2) of the Act by imposing the penalty of only Rs.10,000/-. No reason has been mentioned for condoning the other default. The assessee was given to understand that since the appeal against the quantum addition was pending, therefore, penalty could not be imposed. It is stated in the statement of fact on Form No. 35 filed before the Ld. CIT(A) that the aforesaid notice dated 01.08.2019 was not received by the assessee and, therefore, she could not comply with the same, hence the penalty is not justified. Nothing has been placed on record to controvert this statement of the assessee. As per the penalty order, this notice was duly served upon the specified e-mail ID provided by the assessee i.e. rajkrbijay @gmail.com but it is not mentioned whether this e-mail ID was mentioned in the return of income, therefore, the assertion that the notice was not received by the assessee has not been cross-checked with the record nor any finding has been made in this regard by the Ld. CIT(A) nor the AO has rebutted the same. Apparently, the fact of non-compliance during the appellate proceedings before the Ld. CIT(A) also weighed against the assessee while confirming the penalty by the Ld. CIT(A). However, the notices by the Ld. CIT(A) were also sent by email. Therefore, on account of serving of the notices

by email, which the assessee has denied to have received, there was reasonable cause for not complying with the notice as the notice sent through email had not been received by the assessee. This has not been controverted by placing any further evidence before us. Moreover, no reason has been mentioned by the AO for not imposing the penalty for other default, namely non-compliance with notice u/s. 143(2) of the Act thereby implying that the other default was condoned. As the assessee had a reasonable cause for non-compliance on account of non-receipt of the notice, therefore, the penalty of Rs.10,000/- imposed cannot be sustained and is hereby deleted.

10. In the result, the appeal of the assessee is partly allowed and the penalty imposed is hereby deleted.

Order pronounced in the open court on 14th May, 2024.

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Rakesh Mishra)
Accountant Member

Dated: 14th May, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. The CIT,
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata