

आयकर अपीलिय अधिकरण, इंदौरन्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.01/Ind/2024
Assessment Year: 2014-15

Sadhu Ram Balani, Flat No. B-503, Moti Mahal Apartment, 28-A, Sector-C, Scheme No. 71, Indore.	<u>बनाम/</u> Vs.	ITO-5(1) Indore.
(Appellant / Assessee)		(Respondent / Revenue)
PAN: ABSPB5367L		
Assessee by	Shri S.N. Agrawal, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	02.05.2024	
Date of Pronouncement	29.05.2024	

आदेश/O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 22.12.2023 passed by learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["CIT(A)"] by which the penalty-order dated 06.09.2022 passed by ITO, Ward-5(1), Indore ["AO"] imposing a penalty of Rs. 10,000/- u/s 271(1)(b) of Income-tax Act, 1961 ["the act"] has been upheld, the assessee has filed this appeal.

2. Heard the learned Representatives of both sides and the case records perused.

3. Ld. AR for assessee carried us to Para 4 of the penalty-order passed by AO to point out that the impugned penalty has been imposed for alleged non-compliance of notice dated 25.11.2021 u/s 142(1) issued by AO. Then, he assailed the penalty imposed by AO on following counts:

(i) Firstly, Ld. AR assailed merit of penalty. For this, he carried us to Para 2 of assessment-order dated 28.03.2022 passed by AO to show that the impugned notice dated 25.11.2021 u/s 142(1) was issued by AO seeking compliance from assessee on or before 10.12.2021 but thereafter assessee's case was transferred to Faceless Assessment Unit on 08.12.2021 and the Faceless Assessment Unit issued a fresh notice dated 21.12.2021 u/s 142(1) followed by notices dated 20.01.2022, 31.01.2022 and 25.02.2022. In response, the assessee filed reply dated 05.03.2022 which is re-produced by AO in Para 5 of assessment-order. Therefore, the non-compliance of notice dated 21.12.2021 was dissolved with the issuance of subsequent notices by AO and filing of reply by assessee. That apart, the AO has ultimately taken into account the assessee's reply dated 05.03.2022 while completing assessment u/s 143(3) as is clearly mentioned by AO himself in Para 6 of assessment-order and also repeated in Para 10 of assessment-order. Therefore also, the non-compliance of notice dated 25.11.2021, if any, has dissolved. Ld. AR submitted that the AO

cannot impose penalty in a situation when the default committed in past is made up by subsequent compliance. To support his stand, Ld. AR relied upon the decision of **ITAT, Nagpur in Sabir Hussain Vs. Income-tax Officer, Ward-2, Bhilai 25 ITC 184** holding thus:

"In the case of non-compliance of the first, second and third notices, the AO could have completed the assessment to the best of his judgement and intimated the penalty proceedings. Instead of doing that, the AO issued still another notice u/s 143(2) which could only mean that he had condoned the earlier default if any so far as the final notice was concerned, there was no default on the part of the assessee because he alongwith his counsel did attend the proceedings before the AO. The assessment was made u/s 143(3) of the Act. In that view of the matter, I hold that the AO could not penalize the assessee for the default committed in the past which appeared to have been condoned by him."

- (ii) Secondly, Ld. AR assailed technical side of penalty-proceeding conducted by AO. For this, he carried us to various show-cause notices issued by AO which are three in number. Firstly, he referred the show-cause notice dated 28.03.2022 issued by AO, copy at Page 15 of Paper-Book, to show that the AO has only mentioned therein *"Non-compliance to notice u/s 142(1)"*. Ld. AR submitted that the AO issued multiple notices u/s 142(1) but, however, did not specify in show-cause notice as to which notice u/s 142(1) was not complied? Then, he carried us to second and third show-causes notices dated 04.08.2022 and 11.08.2022 filed at Page 16-17 of Paper-Book wherein the AO has mentioned non-compliance of notice 28.03.2022. Thus, in all of the three show-cause notices issued by AO, there is no mention of non-compliance of notice dated 25.11.2021. Ld. AR submitted that when there is no show-cause notice for non-compliance of notice

dated 25.22.2021, how can the AO impose penalty for non-compliance of same in penalty-order? Ld. AR strongly contended that when the show-cause notices fail to specify default, the ultimate order passed on the strength of those notices is clearly illegal and must be quashed.

4. Ld. DR for revenue only submitted that the assessment-order is passed u/s 144 which is clearly mentioned in the Table of information on first page of assessment-order. He also referred Para 9 wherein the AO has mentioned that a show-cause notice dated 24.03.2022 was issued to assessee for proceeding u/s 144 but the assessee did not respond, therefore assessment is made u/s 144.

5. In rejoinder, Ld. AR submitted that the AO has mentioned section 144 on first page of assessment-order because of non-filing of return by assessee in response to notice u/s 148 and not because of non-compliance of notice u/s 142(1). Ld. AR referred Para 1 of assessment-order where the AO has noted that the notice u/s 148 was sent to the email 00ITR00@GMAIL.COM whereas the assessee's email id was sadhurambalani@gmail.com. Since the notice was sent to a wrong email, the assessee could not file return in response to the notice u/s 148 which has led to mention of section 144 on the first page of assessment-order.

6. We have considered rival submissions of both sides and perused the orders of lower authorities. After a careful consideration, we find that the notice dated 25.11.2021 was the first notice u/s 142(1) issued by AO and

this notice sought compliance from assessee by 10.12.2021. But in the meantime, the case of assessee was transferred to Faceless Assessment Unit on 08.12.2021 and thereafter the Faceless Assessment Unit issued newer notices. The assessee filed reply dated 05.03.2022 to the notice of Faceless Assessment Unit which is an undisputed fact. In fact, the assessee's reply has been re-produced in assessment-order itself. The Faceless Assessment Unit has taken cognizance of assessee's reply in framing assessment which is discernible from assessment-order. Therefore, in the situation, Ld. AR has a point that the default in compliance of notice dated 25.11.2021 is recovered or dissolved by subsequent notices and reply filed by assessee. There is also weightage in submission of Ld. AR that the AO has issued three show-cause notices for penalty but in none of those notices there is a charge for non-compliance of notice dated 25.11.2021. When it is so, we agree to Ld. AR's contention that the penalty-order imposing penalty for non-compliance of notice dated 25.11.2021 cannot withstand. Ld. DR has not been able to controvert Ld. AR's submission on this technical aspect. Thus, considering from all angles, we are not inclined to uphold the penalty imposed by AO. Consequently, the same is deleted. The assessee succeeds in this appeal.

7. Resultantly, this appeal is allowed.

Order pronounced in the open court on 29.05.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/Dated :29.05.2024

CPU/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore