

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.319/Bang/2024
Assessment Year : 2013-14

Smt. Veena Bhan, Flat No.106b, Sterling Park Sahakaranagar, Bengaluru – 560 092. PAN : ALIPB 6489 R	Vs.	ITO, Ward – 6(3)1, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	None
Revenue by	:	Ms. Matta Padma, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	05.06.2024
Date of Pronouncement	:	05.06.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against the order of CIT(A) dated 31.12.2023 passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2013-14.

2. The solitary issue that is raised is whether CIT(A) is justified in passing ex-parte order confirming the imposing of penalty under section 271(1)(b) of the Act amounting to Rs.40,000/-.

3. Brief facts of the case are as follows:

Assessee is a housewife. For the Assessment Year 2013-14, return of income was filed on 28.01.2014 disclosing net income of Rs.1,74,230/-. To examine the source of cash deposit maintained in assessee's bank account with J & K Bank, notice under section 148 of the Act was issued. During the course of reassessment proceedings, notices under section 142(1) of the Act were issued on 25.09.2020, 04.02.2021, 05.08.2021 and 20.08.2021. Since there was no response from the assessee's side to the notices issued under section 142(1) of the Act, the assessment was completed on best judgment basis under section 144 r.w.s. 147 of the Act wherein the entire cash deposit amounting to Rs.12,80,000/- was added to the total income.

4. Pursuant to the assessment being completed under section 144 r.w.s. 147 of the Act, assessee was issued show cause notice for imposition of penalty under section 271(1)(b) of the Act. Since there was no response to the various show cause notices (four show cause notices), the AO imposed penalty under section 271(1)(b) of the Act amounting to Rs.40,000/- being default committed / non-compliance for the notice issued under section 142(1) of the Act dated 25.09.2020, 04.02.2021, 05.08.2021 and 20.08.2021 (an amount of Rs.10,000/- for each of the defaults).

5. Aggrieved by the Order imposing penalty under section 271(1)(b) of the Act, assessee preferred appeal before the First Appellate Authority (FAA). During the course of appellate proceedings, assessee requested to keep the matter in abeyance till a decision is taken in the quantum assessment. However, the CIT(A) rejected the prayer of the assessee by holding that penalty proceedings under section 271(1)(b) of the Act relates to procedural non-compliance issue and hence additions / deletion on the quantum assessment will in no way effect the imposition

of penalty under section 271(1)(b) of the Act. Since the assessee had not produced any reasons before the CIT(A) for non-compliance of notices issued under section 142(1) of the Act, the order imposing penalty under section 271(1)(b) of the Act was confirmed by the CIT(A).

6. Aggrieved by the Order of the CIT(A), assessee has filed the present appeal before the Tribunal. None was present on behalf of the assessee. However, assessee had filed the written submissions stating therein the reasons for non-compliance of the notices issued under section 142(1) of the Act during the course of assessment proceedings. The reason stated in the written submission is that she was having strained relationship with her husband which compelled her to live in her parental house away from the residential flat owned by her husband. It was stated that the notices were sent on the address of her husband which he failed to pass on to the assessee willfully in order to harm her. However, assessee has not placed on record any evidence to that effect that during the relevant period when the notices were issued under section 142(1) of the Act during the course of assessment proceedings she was not available in the address to which notices were issued. A statement without evidence cannot be taken note of especially when the assessment proceedings as well the penalty proceedings remained ex-parte.

7. However, we find that the penalty has been imposed under section 271(1)(b) of the Act for each of the notices being issued for non-compliance under section 142(1) of the Act. The Delhi Bench of the Tribunal in the case of Rekha Rani Vs. DCIT reported in [2015] 60 taxmann.com 131 (Delhi – Trib) had held that penalty under section 271(1)(b) could not be imposed for each and every notice issued under section 143(2) / 143(1) of the Act which remain non-compliant. It was further held by the Tribunal that default being same, it should be imposed only for the first default alone. The relevant finding of the Tribunal reads as follows:

“5. We have considered the submissions of learned DR and have perused the order of the Assessing Officer and the learned CIT(A). we find that there was no reasonable cause on the part of the assessee for not appearing on the different dates of hearing before the Assessing Officer in response to notice issued under Section 143(2) of the Act. However, we find that the default is same and, therefore, penalty of Rs. 10,000/- could be imposed for the first default made by the assessee in this regard. The penalty under Section 271(1)(b) could not be imposed for each and every notice issued under Section 143(2), which remained not complied with on the part of the assessee. The provision of Section 271(1)(b) is of deterrent nature and not for earning revenue. Any other view taken shall lead to the imposition of penalty for any number of times (without limits) for the same default of not appearing in response to the notice issued under Section 143(2) of the Act. This does not seem to be the intention of the legislature in enacting the provisions of Section 271(1)(b) of the Act. In case of failure of the assessee to comply with the notice under Section 143(2) of the Act, the remedy with the Assessing Officer lies with framing of "best judgement assessment" under the provisions of Section 144 of the Act and not to impose penalty under Section 271(1)(b) of the Act again and again. In this view of the matter, we restrict the penalty levied under Section 271(1)(b) of the Act to the first default of the assessee in not complying with the notice under Section 143(2) of the Act. Accordingly, the penalty imposed is restricted to Rs. 10,000/- as against Rs. 50,000/- confirmed by the learned CIT(A). The grounds of appeal of the assessee are thus partly allowed.”

8. In view of the above Order of the Tribunal, we hold that penalty can be imposed under section 271(1)(b) of the Act only in respect of the first default and not in respect of each and every notice issued under section 142(1) of the Act. Therefore, the penalty imposed is restricted to Rs.10,000/- instead of Rs.40,000/- confirmed by the CIT(A). It is ordered accordingly.

9. In the result, appeal filed by the assessee is partly allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(WASEEM AHMED)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 06.06.2024.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.