

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 633/Ahd/2023
Assessment Year 2020-21**

Shivarth General Trading LLP 6, New Umanagar Amraiwadi, Nr. Rabari Colony, Ahmedabad-380008 Gujarat PAN: ADJFS6587N (Appellant)	Vs	The Income Tax Officer, Ward-6(1)(1), Ahmedabad (Respondent)
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**Assessee Represented: Shri Aseem L. Thakkar, A.R.
Revenue Represented: Shri Ashok Natha Bhalekar, Sr.D.R.**

Date of hearing : 15-05-2024
Date of pronouncement : 19-06-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the ex-parte appellate order dated 22.06.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), confirming the levy of penalty under section 272A(1)(d) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2020-21.

2. The brief facts of the case is that the assessee is a firm engaged in the business of Wholesale & Retail Trading of the Dry fruits, Pulses, Spices, Fruits. For the Asst. Year 2020-21, assessee filed its Return of Income on 18.03.2021 declaring total income of Rs.16,61,820/-. The case was taken up for scrutiny assessment and 142(1) notice dated 01.11.2021, 22.11.2021 and 13.12.2021 were issued, however the assessee failed to response to the above notices. Therefore, the A.O. issued show cause notice dated 04.02.2022 and revised show cause notice dated 29.08.2022 against which the assessee furnished part information on 27.08.2022. Based on the same, assessment was completed, determining the total income as Rs.60,62,28,079/- and unproved sundry creditors of Rs.739,07,990/- which was brought to tax u/s 69A r.w.s. 115BBE(1) of the Act. Since the assessee failed to comply to the statutory notices issued u/s 142(1) of the Act, a show cause notice u/s 274 r.w.s. 272A(1)(d) of the Act dated 23.09.2022 and 11.10.2022 were issued to the assessee as to why impose penalty u/s 272A(1)(d) of the Act.

3. In response, the assessee submitted its reply as follows:

“4. Without prejudice to the submission hereinabove, even assuming for a moment without admitting that there was alleged non-compliance with notice u/s. 142(1) dated 13.12.2021, such default is not deliberate or intentional but due to good and sufficient reasons beyond the control of the assessee. It is worthwhile to mention here that the assessee was not in a position to compile the various information called for as per the notice issued us. 142(1) of the Act. This is on account of the fact that earlier our accountant was suffering from Covid and because his ill-health and prolonged absence, the details could not be prepared by us. Thereafter, a new accountant has come to be engaged who is making serious attempts to collect the details and prepare/compile the same for submissions.

Seeing that the matter has assumed gravity the perusal of the notice we have immediately engaged a new counsel for representing us in the above assessment proceedings. Your Honor will appreciate that the assessee was totally disabled from complying with the notice because of the absence of the accountant who was affected by the pandemic Covid-2019 and the assessee could engage new accountant only later on. Kind attention is invited to the provisions of section 273B which postulates that where the default is due to good and sufficient reasons, no penalty is to be levied. In the case of the assessee, their existed good and sufficient reasons as mentioned above for the omission to comply with the notice. It is therefore requested that the penalty proceedings may please be dropped in view of section 273B of the Act. Moreover, the assessment was ultimately pass u/s. 143(3) r.w.s. 144B of the Act.”

4. However the Assessing Officer was not satisfied with the explanation offered by the assessee and held that non-compliance of notice u/s. 142(1) of the Act attracts penalty u/s. 272A(1)(d) of the Act and thereby levied penalty of Rs.30,000/- for three defaults committed by the assessee.

5. Aggrieved against the penalty order, assessee filed an appeal before Ld. NFAC. However the assessee failed to appear before Ld. NFAC in spite of three hearing notices given on 26.05.2023, 01.06.2023 and 14.06.2023 thereby the appeal was dismissed for non-prosecution and failure to file any supporting evidence in support of the grounds raised by the assessee.

6. Aggrieved against the same, the assessee is in appeal before us raising the following Ground of Appeal:

1. The learned Commissioner of Income Tax (Appeals) has erred in passing ex-Parte Order without providing reasonable opportunity of being heard to the appellant hence the same should be quashed.

2. The learned Commissioner of Income Tax (Appeals) has erred in confirming the Penalty of Rs.30,000/- levied by the Assessing Officer u/s.271A(1)(d) of the I.T. Act, 1961 for the alleged noncompliance by the appellant to the notices issued by him.

3. The Appellant craves leave to add, alter, amend or modify any of the grounds of appeal on or before the date of hearing of appeal.

7. Ld. Counsel Shri Aseem L. Thakkar appearing for the assessee submitted that though the assessee could not respond to the initial notices issued u/s 142(1) of the Act, since the Accountant was suffering from Covid-19 ailments and the new Accountant could not be able to collect the details and submit before the assessing officer. However assessee filed its reply to the final show cause notice and assessment was passed after hearing the assessee and not an exparte order. Hence the levy of penalty for non-compliance to the notices is liable to be deleted, taking note of the reason beyond the control of the assessee.

8. Per contra, the Ld. Sr. D.R. Shri Ashok Natha Bhalekar appearing for the Revenue submitted that 142(1) notices issued are after the Covid-19 Pandemic situation and no medical records are filed by the assessee. Furthermore the appeal before the Ld. CIT(A) was also not represented by the assessee, which has resulted in passing exparte order. Therefore for non-compliance to the 142(1) notices, the penalty levied by the assessing officer liable to be sustained.

9. We have given our thoughtful consideration and perused the materials available on record. The three statutory notices were issued u/s. 142(1) dated 01.11.2021, 22.11.2021 and 13.12.2021

are after the Covid-19 pandemic period. That assessee's claim that its Accountant was suffered with Covid-19 Pandemic was not supported with any medical records. However the assessee has responded to the final show cause notice dated 29.08.2022 which has resulted in passing the regular assessment order u/s. 143(3) r.w.s. 144B of the Act, during the faceless assessment proceedings. The assessee has explained that on going assessment proceedings came to know only after the receipt of penalty notice issued u/s. 272A(1)(d) on 23.09.2022. Since the assessee's Accountant was also not well past Covid-19 Pandemic situation, the assessee could not reply to the earlier statutory notices and filed its reply which has resulted in passing the regular assessment order dated 23.09.2022 u/s. 143(3) in the faceless regime. The Assessing Officer extracted the reply filed by the assessee that his Accountant suffering from Covid-19 ill health and his prolonged absence made the assessee not to file the details. Thereafter a new Accountant was engaged, with various difficulties collected the information and submitted before the assessing officer which are reproduced in Page No. 22 of the assessment order. Thus the assessee has been able to show reasonable cause for the failure to comply with statutory notices issued u/s. 142(1) of the Act. Further the assessee has made reply to the final show cause notice with relevant materials and the assessing officer after considering the reply of the assessee, framed the assessment on 23.09.2022. Once the assessee has made compliance, though after some delay but it was well before the assessment order was framed, after considering the reply and documents filed by the assessee, then it does not fall in the category of non-compliance by the assessee at all. Hence, in

the facts and circumstances of the case when the assessee finally complied with the notice and the Assessing Officer has duly considered the reply and the documents filed by the assessee, while framing the assessment, then the subsequent penalty levied by the Assessing Officer is not justified. Even otherwise, when this is the year of changing the mode of assessment proceedings from physical to digital/electronically, then the delay in compliance due to change in the mode of communication and proceedings is a bonafide reasons and not deliberate. Accordingly, the penalty levied by the Assessing Officer under section 272A(1)(d) is deleted.

10. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 19-06-2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad: Dated 19/06/2024 TRUE COPY

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद