

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &
SHRI RAJ KUMAR CHAUHAN, JM**

**I.T.A. No. 897/Mum/2024
(Assessment Year: 2015-16)**

Shyam Kumar Sadashivam Pillai 401/402, C Wing, 4 th Floor, Runwal Center, Govandi Station Road, Deonar, Mumbai - 400088. PAN : BDGPP8031C	Vs.	CIT(A)/ ITO Ward-27(3)(1), Vashi Station Building, Navi Mumbai.
Appellant)	:	Respondent)

Appellant/Assessee by : Shri Sukhsagar Syal, Advocate
Revenue/Respondent by : Shri G. Santosh Kumar, Sr. DR

Date of Hearing : 11.06.2024
Date of Pronouncement : 20.06.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] dated 30.12.2023 for the AY 2015-16. The assessee raised the following grounds of appeal:

Each of the grounds of appeals is mutually exclusive of, independent and without prejudice to the other.

1. The order u/s 250 of the Income Tax Act, 1961 ("Act") passed by the learned CIT- Appeal ("Ld. CIT(A)") is in haste and without considering the fact that the order initiating the captioned penalty (i.e. quantum appeal) is pending before CIT(A) for disposal.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in passing order u/s 250 of the Act ignoring the provisions of section 275 of the Act.

3. The Appellant craves to add, alter, amend or delete all or any of the grounds of appeal before or during the course of hearing.

2. The assessee is a non-resident individual residing in United Arab Emirates (UAE) for the last 30 years. On the basis of information received to the effect that the assessee has sold immovable property valued at Rs. 91,40,000/- during the year under consideration and that the assessee has not filed return of income for the Assessment Year (AY) 2015-16, the Assessing Officer (AO) reopened the assessment under section 147 of the Income Tax Act, 1961 ('the Act'). The AO issued notices under section 142(1) of the Act dated 28.10.2022, 22.12.2022, 10.01.2023 & 25.01.2023. The assessee did not respond to notices and therefore, the AO issued a penalty notice under section 271(1)(b) dated 01.02.2023 asking the assessee to show-cause why an order imposing penalty should not be passed and fixed the date of compliance on 08.02.2023. The assessee responded vide representation dated 22.02.2023, stating that he is in the process of filing the return of income under section 148 and making submission against 142(1). The AO after considering the reply filed by the assessee issued another show-cause notice dated 19.07.2023 asking the assessee to file reply by 20.07.2023. The assessee replied stating that the penalty under section 271(1)(b) should not be levied since the assessee has responded to notice issued under section 142(1) on 15.02.2023 and

subsequently filed the relevant details on 24.02.2023 including the return of income have been filed. The assessee also furnished the copies of return of income and other details before the AO. The AO however, did not accept the submissions of the assessee and proceeded to levy penalty by holding that

*“5. The above explanation of the assessee is considered carefully and **found to be not acceptable for the reasons that***

1. it becomes apparent that there was no reasonable cause on the part of the assessee for non-compliance to the various notices and letters issued during the reassessment proceedings. Sec. 142(1) of the Act contemplates enquiry before assessment in order to determine the true and correct income of the assessee and it is the duty of every assessee to cooperate with and join the proceedings to ascertain the truth regarding cases. The purpose of the penal provision contained in Section 271(1)(b) is to ensure that the assessee has to comply with the notices issued u/s 142(1). Penalty is attracted where there is failure to comply with notices u/s 142(1) of the Act & u/s 143(2) of the Act.

2. Mere reasons that "due to server issues on banking portal, the assessee could not pay his taxes and details would be furnished as soon as the banking site gets restored" will not be the sufficient cause to drop the penalty proceedings for non-compliance to the notices issued u/s 142(1) from time to time. During the course of reassessment proceedings, the assessee was simply keeping silent for all the notices issued from 31.3.2022 till 24.2.23 and even not bothered to file basic details. Also, the assessee has not sought any adjournment or seeking time. Only after issue of Final & Second Show cause notice on 15.2.2023, assessee came forward and filed the basic details on 24.2.2023 that too after expiry of compliance date of 22.2.2023. This clearly shows that the assessee has disregarded the notices issued from time to time and forced the FAO to complete the reassessment proceedings at the fag end of time barring period.

3. All the email notices delivered promptly at the address sandhyapillai1976@gmail.com and the notice has also been issued through speed post through Centralized Communication centre vide speed post No. Speed Post No: JA162069686IN on 25.01.2023. But the assessee has chosen not to respond to the notices issued from time to time. This clearly shows that the assessee has not co-operated with the reassessment proceedings and not filed even the basic details within the time allowed in the notices.

6. Conclusion drawn for Imposition of Penalty:

6.1 On considering the entirety of the facts and circumstances in this case and it becomes apparent that there was no reasonable cause on the part of the assessee for non-compliance to the various notices and letters issued during the assessment proceedings.

6.2 It is the duty of every assessee to cooperate with and join the proceedings to ascertain the truth regarding cases. The purpose of the penal provision contained in Section 271(1)(b) is to ensure that the assessee has to comply with the notices issued u/s 142(1). Penalty is attracted where there is failure to comply with notices u/s 142(1) of the Act.

6.3 Based on the above observation, I am satisfied that, it is a fit case for levying of penalty as contemplated u/s 271(1)(b) of the income tax Act. Therefore, I levy penalty of Rs. 40,000/- (Rupees Forty thousand only) u/s 271(1)(b) of the Income Tax Act as the assessee had deliberately and willfully failed to comply for the notices issued u/s 142(1) of the Act vide dated 28-10-2022, 22-12-2022, 10-01-2023 and 25-01-2023 for the A.Y 2015-16. Demand notice is attached herewith.”

3. Aggrieved the assessee filed further appeal before the CIT(A). The assessee submitted before the CIT(A) that though the first 4 notices were not responded by the assessee, the notice dated 15.02.2023 was responded stating that the assessee is in process of filing the return and that vide reply dated 22.02.2023 the assessee has submitted the details of return of income filed along with other relevant documents before the AO. The assessee further submitted that the AO has passed the penalty order without considering the fact that the subsequent notices under section 142(1) have been responded by the assessee. The assessee also submitted that he is a non-resident Indian residing in UAE for the last 30 years and the assessee did not respond to the first four notices since these notices were sent to the email Id of his wife. Once the assessee came to the knowledge of initiation of re-assessment proceedings, he immediately responded by filing the return of income discharging the tax liability due thereon. The assessee also pleaded before the CIT(A) to adjudicate the appeal filed against the order under section 147 r.w.s. 144 by the AO so that the quantum appeal if dismissed would make the appeal against the penalty

order infructuous. However, the CIT(A) did not accept the submissions of the assessee upheld the penalty stating that the decision with respect to quantum appeal has no relevance for deciding the appeal against the penalty order of the AO. The assessee is in appeal before the Tribunal against the order of the CIT(A).

4. The Id. Authorized Representative (AR) reiterated the submissions made before the CIT(A). The Id. AR further submitted that the AO has levied the penalty for the reason that the first four notices dated 28.10.2022, 22.12.2022, 10.01.2023 & 25.01.2023 have not been responded by the assessee but failed to take notice that the subsequent notices have been responded. The Id. AR also submitted that the assessee has filed the return of income and discharged the tax liability thereon and has filed all the details before the AO. The Id. AR argued that the AO though has stated that the assessee has responded to subsequent notices has levied the penalty only for the reason that the first four notices have not been responded. The Id. AR further argued that it is an undisputed fact that the email Id to which the notices have been sent is that of assessee's wife and therefore the assessee's claim that he did not come to know of the issue of notice has merits. The Id. AR also argued that by filing the return of income and furnishing all the relevant details before the AO, there is a substantial compliance on the part of the assessee and that there is no intentional non-compliance. Therefore, the Id. AR prayed that the penalty may be deleted.

5. The Id. Departmental Representative (DR) on the other hand argued that the first four notices were issued over a period of one year and that the assessee did not comply with any of these notices. Accordingly, the Id. DR supported the order of the lower authorities. The Id. DR fairly conceded to the request of the Id. AR that

the penalty appeal could be remitted back to the CIT(A) to be decided along with the quantum appeals.

6. We heard the parties and perused the material on record. The AO reopened the assessment of the assessee based on the information that the assessee has sold a property during the year under consideration for Rs.91,40,000 and that no return of income has been filed. The AO issued notices under section 142(1) on various dates and the assessee filed the return of income under section 148 in response to last of the notices. The assessee paid the tax due on the income returned and filed all the relevant details before the AO. The fact that the assessee has responded to the last of the notices under section 142(1) and has filed the details was had been acknowledged by the AO in the order passed under section 147 r.w.s.144B. In the penalty proceedings also the AO considers these facts but proceeds to levy penalty for non-compliance of first 4 notices at Rs.10,000 per notice. While considering the issue of penalty under section 271(1)(b) of the Act, it is relevant to look at the provisions of section 273B of the Act which contains provisions to state that the penalty cannot be imposed under certain circumstances. The provisions of Section 273B read as under –

Penalty not to be imposed in certain cases.

273B. Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271B, section 271BA, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, section 271FAB, section 271FB, section 271G, section 271GA, section 271GB, section 271H, section 271-I, section 271J, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) or sub-section (1A) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, **no penalty shall be imposable** on the person or the assessee, as the case may be, for any failure referred to in the said provisions **if he proves that there was reasonable cause for the said failure**.

7. From the plain reading of the above section it is clear that the penalty under section 271(1)(b) cannot be levied if the assessee is able to prove that there was a reasonable cause for failure to respond to the notice under section 142(1) of the Act. In the context of the penalty provisions including the provisions of Section 271(1)(b), the word "reasonable cause" would mean a cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or lack of bona fide. In the light of the above legal position we will now look at the assessee's case. Assessee is a non-resident Indian and has been living out side India for the last 30 years. The assessee during the year under consideration sold a house property for a consideration of Rs.91,40,000/-. The assessee's contention is that the he was under the bonafide belief that being a non-resident, there is no requirement to file the return of income. The assessee is also contending is that the notice of reopening and the notice under section 142(1) were sent to the email id of assessee's wife who missed to take note of the first 4 notices. The assessee is further contending that subsequently when the assessee came to know of such notices he immediately complied with the same. We in this regard notice that the assessee has furnished the return of income under section 148 along with discharging the tax liability and vide letter date 22.04.2024 the assessee has filed the relevant details pertaining the sale of property, bank details, details of return of income etc., before the AO. We further notice that the AO in the proceedings under section 147 acknowledged the fact that the assessee has responded to the notice on 24.02.2024 (refer page 2 and 4 of order under section 147 r.w.s.144B) but still the AO vide order dated 20.03.2023 completed the assessment under section 147 r.w.s 144B without considering the case on merits.

8. During the penalty proceedings the assessee has brought to these facts to the notice of the AO that he has filed the relevant details before the AO in the reassessment proceedings and therefore penalty under section 271(1)(b) is not warranted. The ld DR in this regard argued that the reassessment proceedings were completed under section 147 r.w.s.144 and therefore the assessee cannot take the plea that the details submitted thereby not warranting penalty. However we are unable to appreciate this contention of the ld DR since the penalty under section 271(1)(b) is levied for the failure on the part of the assessee to comply with the notices issued under section 142(1) and in the given case it is an undisputed fact that the assessee has responded to the last of such notices (refer para 2 of AO's order extracted in the earlier part of this order). Therefore we are inclined to agree with the contention that there is no deliberate non-compliance to respond to the notice under section 142(1) by the assessee. Further the contention that being a non-resident the assessee did not come to know of the notices sent to his wife's id is a reasonable cause also has merits.

9. It is relevant here to quote the below observations of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. v. State of Orissa [(1972) 83 ITR 26 (SC)] –

"Penalty is not to be imposed if there is no conscious breach of law. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or guilty of conduct, contumacious or dishonest, or acted in conscious disregard to its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial

breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute"

10. From the facts it is clear that there is no willful and complete failure on the part of the assessee to respond to the notices and given that the assessee has in fact responded to the last of the notices we are of the view that the levy of penalty under section 271(1)(b) for failure to respond to the first 4 notices by the assessee is not justified. Therefore we direct the AO to delete the penalty levied.

11. In the result, the appeal is allowed.

Order pronounced in the open court on 20-06-2024.

Sd/-
(RAJ KUMAR CHAUHAN)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai