

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 78/JP/2024
निर्धारण वर्ष / Assessment Years : 2015-16

Reena Mathur Plot 38 Abhiyanta Nagar, Chourasiyawas Road, Vaishali Nagar, Ajmer	बनाम Vs.	Income Tax Officer, Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHTPM 0817 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Satish Shivnani, CA
राजस्व की ओर से / Revenue by : Smt. Monisha Chaudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 04/07/2024
उद्घोषणा की तारीख / Date of Pronouncement: 22/07/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the National Faceless Appeal Centre, Delhi dated 20/12/2023 [here in after (NFAC)/ Id. CIT(A)] for assessment year 2015-16 which in turn arise from the penalty order dated 18.10.2022 passed under section 271(1)(b) of the Income Tax Act, by AO.

2. In this appeal, the assessee has raised following grounds: -

“1. It is prayed that in the body of the assessment order and in the penalty order that the following notice issued u/s 142(1) of the IT act are required to be served upon assessee and these date of service upon assessee are not recorded in the body of the assessment order and not in the penalty order. A thing which is not served upon assessee then department cannot accept the compliance of the notices u/s 142(1) and the details are as under: Notice u/s Date of Issue Date of hearing Remark 142(1) 27.10.2021, 18.11.2021 In this notice here it is not mentioned that when it was served upon the assessee in October- November month, there are Navratri and other festivals etc. and these facts are not considered by the AO for the submission of information. 142(1) 18.11.2021 26.11.2021 The AO has not mentioned in the assessment order that when this notice was served upon assessee and in this duration there are two holidays.

2. 142(1) 24.12.2021 31.12.2021 The AO has not mentioned in the assessment order that when this notice was served upon assessee and in this duration there are two holidays. It is further mentioned here that notice issued by the department on 24-12-2021 was served upon the assessee through speed post which was served on 1-2-2022. It is requested that it is evidenced from the assessment order that this notice was not served upon the assessee in the specified date, and on this letter the department has imposed penalty beyond the facts. Therefore on this commitment this penalty may be deleted. It is self proved that 24-12-2021 was served upon the assessee after the due date of 31-12-2021.

3. As per provision of the income tax act notice u/s 142(1) may be served upon the assessee and these instructions are not implied in the assessee's case because the notice were never served upon the assessee. The assessing officer has passed assessment order on 27-3-2022 and along with this assessment order there was no notice regarding penalty proceedings initiation were issued in this case and neither these were served upon the assessee. In the assessee's case instruction of CBDT are not followed by the assessing officer. As per CBDT'S direction in the compliance on notice u/s 142(1) minimum 15 days may be granted from the date of service to furnish required information u/s 142(1) of the Income Tax Act and these instructions are not followed by the departmental authority in the assessee's case. The assessing officer has not accepted the decision of Honourable Allaahbad ITAT in the matter of Gyan Mata Radha Satyam Kriyayog Ashram Research Institute Vs ITO.

4. As in the body of the assessment order the assessing officer has accepted that notice issued on 24-12-2021 was not served upon the assessee in the due date 31-12-2021 and it was served upon the assessee through compliance verification unit on 1-2-2022. The Grounds of appeal may be craved, may be

modified, may be added to the ground of appeal before the decision of Honourable Appellate Authority.”

3. Succinctly, the fact as culled out from the records is that the assessment order u/s 147 r.w.s. 144 read with section 144B of the Income-tax Act, 1961 was passed by National Faceless Assessment Centre, Delhi on 27.03.2022 and total income was assessed at Rs. 16,18,000/-. During the course of assessment proceedings, following Notices u/s 142(1) of the Income Tax Act, 1961 were issued to the assessee and the same were served upon e-mail of the assessee and were also shared on e-proceedings in e-filing website of the Department.

S. No.	Notice issued under section	Date of issue	Date of compliance
1	142(1)	27.10.2021	18.11.2021
2	142(1)	18.11.2021	26.11.2021
3	142(1)	24.12.2021	31.12.2021

In response to the above notices, the assessee has not filed any reply by the due dates and, therefore, while passing Assessment Order u/s 147 r.w.s. 144 read with section 144B of the Income Tax Act, 1961 on 27.03.2022, Penalty proceedings was separately initiated for non-compliance of above referred Notices u/s 274 r.w.s. 271(1)(b) of the Income-tax Act, 1961 dated 27.03.2022. The said notices were duly served upon registered e-mail ID of the assessee on 27.03.2022 itself. In response

to the said Notice dated 27.03.2022, no reply was furnished by the assessee.

3.1 The case was transferred from National Faceless Assessment Centre, Delhi to ITO, Ward 2(1), Ajmer on 01.08.2022 with the remarks "The Faceless Penalty Scheme-2021 has been amended by Faceless Penalty (Amendment) Scheme, 2022 vide S.O No. 2425(E) dated 27.05.2022. This necessitates software changes in ITBA which was underway. Accordingly, the penalty proceedings likely to get barred by limited on or before 30.09.2022 are being transferred to Jurisdictional Assessing Officer (JAO) with the approval of CBDT in terms of para 5(2) of Faceless Penalty Scheme for appropriate necessary action.

3.2 An opportunity was again provided to the assessee by ITO, Ajmer vide notice dated 10.08.2022, to furnish the response electronically in e-proceedings' facility through the account in e-filing website by 05.00:00 PM of 18.08.2022. The said Notice dated 10.08.2022 was duly delivered upon e-mail ID of the assessee on 10.08.2022 itself and through speed post on 16.08.2022. In response thereto, the assessee filed reply on 18.08.2022, stating that the assessee was ill and required time to furnish the detailed reply but since the proceedings initiated cannot be kept pending, only on

the reason that the assessee preferred an appeal before Id. CIT(A) against the quantum addition based on these observations, the Id. AO levied penalty of Rs. 30,000/- u/s 271()(b) of the Act for each of the defaults of non-compliance of notices issued.

4. Aggrieved from the order of the Assessing Officer levying penalty u/s 271(1)(b) of the Act, the assessee preferred an appeal before the Id. CIT(A)/NFAC, who has confirmed the levy of penalty by holding as under :-

“4. Appellate findings and decision:

In this case assessment order was passed u/s 147/144/1148 on 27.03.2022 determining total income at Rs. 16,18,000/-. During the course of assessment proceedings, the AO issued three notices dated 27.10.2021, 18.11.2021 & 24.12.2021 requiring compliance online by 18.11.2021, 26.11.2021 & 31.12.2021 respectively. Due the continued non-compliance, the re-opened assessment had to be completed u/s 144/1448 on 27.03.2022. The AO initiated penalty proceedings u/s 271(1)(b) of the Act for non-compliance of the above discussed three notices issued u/s 142(1) In compliance to the notices, the appellant submitted that she was not aware of the technology and had medical issues in the family, hence the notices could not be complied. The AO is of the view that in the in faceless scheme, the correspondence has to be done through "e-proceedings" and the said notices were duly served through email which has not been denied. Ignorance of law or procedure is not an acceptable excuse for non-compliance of any legal proceedings. Accordingly, penalty @Rs. 10,000/- for each n of the three instances of non-compliance was levied by the AO.

Notices u/s 250 of COME the Act were issued on N dates to the appellant to support her grounds of appeal but the appellant has merely reiterated the stand taken before the AO regarding ignorance to technology and medical issues. However, no documentary evidence has been furnished to corroborate her averments. It is further observed that she has not opted for non-faceless assessment procedure. She was, therefore, required to comply in faceless manner as per the notices. There is no denying that the appellant has consistently to failed to comply with the notice issued u/s 142(1) of the Act by the

AO. Even during the appellate proceedings, despite granting opportunity of being heard, the appellant has not bothered to furnish documentary evidence to prove that she was prevented by any reasonable cause to claim immunity u/s 273B of the Act. It is held that the AO has rightly levied penalty u/s 271(1)(b) of the Act for non-compliance. The penalty is confirmed and all the grounds are dismissed.”

5. Feeling dissatisfied and aggrieved from the order of the Id. CIT(A)/NFAC, the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the Id. AR of the assessee, he relied upon the written submissions in respect of the various grounds raised by the assessee and the same is reproduced herein below:

“Most respectfully it is requested that the facts of the case are as follows:

It is prayed that in the body of the assessment order and in the penalty order that the following notice issued u/s 142(1) of the IT Act are required to be served upon assessee and the dates of service of notices upon assessee are not recorded in the body of the assessment order and not in the penalty order. It is humbly prayed that if a notice is not served upon assessee, then department cannot accept the compliance of the notices u/s 142(1) and the details are as under:-

Notice u/s	Date of issue	Date of hearing	Remark
142(1)	27.10.2021	18.11.2021	In this notice here it is not mentioned that when it was served upon the assessee in October-November month, there are Navratri and other festivals etc. and these facts are not considered by the AO for the submission of information.
142(1)	18.11.2021	26.11.2021	The AO has not mentioned in the assessment order that when this notice was served upon assessee and in this duration there are two holidays.
142(1)	24.12.2021	31.12.2021	The AO has not mentioned in the assessment order that when this notice was served upon assessee and in this duration there are two holidays.

It is further mentioned here that notice issued by the department on 24-12-2021 was served upon the assessee through speed post which was served on 1-2-2022. It is requested that it is evidenced from the assessment order that this notice was not served upon the assessee in the specified date, and on this letter the department has imposed penalty beyond the facts.

Therefore on the Basis of this fact penalty may be deleted because the notice was served on the assessee after due date of hearing. It is self proved that notice of 24-12-2021 was served upon the assessee after the due date of 31-12-2021.

As per provision of the income tax act notice u/s 142(1) may be served upon the assessee and these instructions are not implied in the assessee's case because the notice were never served upon the assessee.

The assessing officer has passed assessment order on 27-3-2022 and along with this assessment order there was no notice regarding penalty proceedings initiation were issued in this case and neither these were served upon the assessee.

In the assessee's case instruction of CBDT are not followed by the assessing officer. As per CBDT'S direction in the compliance on notice u/s 142(1) minimum 15 days may be granted from the date of service to furnish required information u/s 142(1) of the Income Tax Act and these instructions are not followed by the departmental authority in the assessee's case.

The assessing officer has not accepted the decision of Honourable Allahbad ITAT in the matter of Gyan Mata Radha Satyam Kriyayog Ashram Research Institute Vs ITO.

As in the body of the assessment order the assessing officer has accepted that notice issued on 24-12-2021 was not served upon the assessee in the due date 31-12-2021 and it was served upon the assessee through compliance verification unit on 1-2-2022.

It is humbly requested that the assessee has been cooperative with the department but due to the non service of the abovesaid notices in due time the assessee could not reply and as soon as the notice was served to her she had complied with. Therefore it is requested humbly to consider the facts and circumstances and drop the penalty imposed u/s 271(1)(b) of the Income Tax Act, 1961."

6. The Id. AR of the assessee submitted that the assessment was completed as per provision of section 144 of the Act ex-parte. The contention of the assessee is that the alleged three notices issued by the

Id.AO has not been served to her. In support she filed an affidavit that the Id. AO has mentioned the date of issue of notice but has not mentioned the fact that whether the same were served to the assessee or not. The Id. AR of the assessee also submitted that all these notices were issued to the assessee via e-mail only and assessee being not well versed with the technology and her husband being cardiac patient, she could not check those e-mail notices which were served online where it is pertinent to note that the assessee has complied the physical notice which was issued by the Id. AO on 16.08.2022 by posts and the compliance was made on 18.08,.2022 these itself support the contention of the assessee that the assessee is serious. The assessee merely not attended the compliance of the online notice on account of the social reason of the assessee being lady be considered as sufficient and reasonable cost for non-compliance on the part of the assessee and her assessment thus was already completed ex-parte. To support that the notices were not served to the assessee was also supported by filling an affidavit by the assessee and the content of the letter and affidavit extracted here in below:

“It is prayed that in respect of papers submitted previously before your honor, Appeal No. ITA 78/JPR/2024, for A.Y. 2015-16. It is prayed that the notices issued u/s 142(1) which are narrated in the body of assessment order were not served upon the assessee, in this regard I am submitting affidavit duly notarize before your honor. Please consider the submission sympathetically and it is

prayed that please consider facts and circumstances of case, please allow the relief and oblige me.”

AFFIDAVIT

I, Reena Mathur, W/O Neeraj Mathur Plot No. 38 Abhiyanta Nagar, Vaishali Nagar, Ajmer, hereby declare that:-

- 1) I am cooperative with the department since beginning.
- 2) During their assessment proceeding for the A.Y. 2017-18 I had cooperate with the department and had submitted the submissions.
- 3) In the body of assessment order dated 27/3/22 the Assessing Officer has mentioned regarding issuing of notice under 142(1) but the date of service is not mentioned.
- 4) It is mandatory that notices must be served upon assessee, but in the case of assessee, no notice(s) were served upon assessee.
- 5) The facts are as under:

Notice u/s	Date of Issue	Date of Hearing	Remarks
142(1)	27/10/2022	18/11/2021	In this notice here it is not mentioned that when it was served upon the assessee in October-November month, there are Navratri and other festivals etc. and these facts are not considered by A.O. for the submission of information.
142(1)	18/11/2021	26/11/2021	The A.O. has not mentioned in the order that when this notice was served upon assessee and in this duration there are two holidays.
142(1)	14/12/2021	31/12/2021	The A.O. has not mentioned in the assessment order that when this notice was served upon assessee and in this duration there are two holidays.

- 6) In the compliance of notice dated 23/03/2022 the assessee has made compliances dated 24/03/2022 which is discussed in the body of assessment order, thus the assessee has complied with the notices as soon as the notices were served upon her.
- 7) During the assessment proceeding the A.O. has not considered the facts of the cases and passed the assessment order.
- 8) In the penalty order dated 21/09/2022 the A.O./ Concerning Officer has ignored the facts that the notices were not served upon the assessee, which are requested as above.
- 9) It is requested, honourable sir please consider the facts and circumstances and delete the penalty.

Reena Mathur
Deponent
(Reena Mathur)

I hereby declare that all the above statements are true and correct to the best of my knowledge.

Reena Mathur
Deponent
(Reena Mathur)

ATTESTED
[Signature]

NOTARY
[Signature]

7. Per contra, the Id DR relied upon the order of Id. CIT(A) and the order of Assessing Officer. So far as the levy of penalty the contention of the Id. AR of the assessee, the assessee is not aware about the notice issued online and having the date in between of holiday is not correct and sufficient reason.

8. We have heard the rival contentions and perused the material placed on record. It is evident that all the notices dated 27.10.2021, 18.11.2021 & 24.12.2021 were issued in an online mode. The faceless penalty proceeding were transferred to the jurisdictional Assessing Officer as there was technical clinching in the ITBA module. The Id. AO in this proceedings issued notices to the assessee by speed post on 16.08.2022 which was compiled by the assessee and replied on 18.08.2022 this action of the assessee itself suggest that the earlier online notice issued to the assessee remained unattended on account of the plea that the assessee is not well versed with technology and her husband being cardiac patient, she has to look after him also. The notice so issued in online mode were not served to the assessee as supported by the affidavit of the assessee. Thus, considering the facts of the case as supported by the affidavit of the assessee we are of the considered view that the assessee has sufficient

and reasonable cause of not complied with the notice issued in an online mode. She on being aware of the notice dated 16.08.2022, made compliance on 18.08.2022 itself shows that the assessee is aware about her obligations and the reason advanced by the assessee being reasonable and sufficient for failure by the assessee and considering the provisions of section 273B of the Act. We direct AO to delete the penalty levied in the case of the assessee for an amount of Rs. 30,000/-. In terms of these observations, the appeal of the assessee is allowed.

Order pronounced in the open court on 22/07/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/07/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Reena Mathur, Ajmer
2. प्रत्यर्थी / The Respondent- ITO, Ajmer
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 78/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar