

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'E': NEW DELHI)**

**BEFORE SHRI G S PANNU, VICE PRESIDENT
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No:- 208/Del/2024
(Assessment Year- 2011-12)**

Neetu Gupta, House No. 10, SSE-NIRE Campus Wadala, Kalan Kapurthala 144601, Punjab.	Vs.	The Income Tax Officer, Ward-3(1), Gurgaon.
PAN No: AQRPG5348Q		
APPELLANT		RESPONDENT

Assessee by : None.
Revenue by : Shri Govind Singhal, Sr. DR

Date of Hearing : 23.07.2024
Date of Pronouncement : 30.07.2024

ORDER

PER SUDHIR PAREEK, JM

In the instant appeal, assessee/ appellant is aggrieved by the impugned order passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [for the sake of convenience, herewith referred to as "CIT(A)"] on dated 28.11.2023, by which the learned CIT(A) dismissed the appeal

preferred by assessee against the order dated 19.06.2019 passed by the Income Tax Officer, Ward 3(1), Gurgaon (in short "AO").

2. Facts of this case may be summarized as that the case of assessee / appellant was opened U/s 147 of the Income Tax Act, 1961 (in short, referred to as "the Act") and the assessment was completed U/s 144 r/w section 147 of the Act vide order dated 10.12.2018, at the income of Rs. 10,65,000/-. In the course of proceedings, notice u/s 142(1) of the Act was issued on 20.11.2018 and in the event of non-responding the same, thereafter, notice U/s 274 r/w section 271 of the Act for levy of penalty U/s 271(1)(b) of the Act was issued by the learned AO, because of alleged non-response of by the assessee / appellant, after given final opportunity on 24.05.2019 , the Learned AO levied penalty of Rs. 10,000/- U/s 271(1)(b) of the Act for default / non-compliance on part of assessee / appellant.

3. Aggrieved by the aforementioned order, the assessee / appellant preferred an appeal before the Ld. CIT(A), but the learned CIT(A) dismissed the same by stating that the appellant had

defaulted in regard to various statutory notices issued to her without any reasonable cause.

4. We heard Learned DR and carefully scanned the material available before us.

5. On behalf of the assessee/appellant, on dated 02.05.2024 written arguments filed by stating *“Please find herewith enclosed the written submissions in regard to above mentioned appeal and assessee do not wish to personal hearing as she had shifted to Kapurthala (Punjab) from Gurgaon. You are requested to decide the case on the given facts. Three sets of Appeal submissions and relevant documents are being filed, two sets for Hon’ble Members and one for Department Representative. Hope you will find the same in order.”*

6. In the written submission while reiterates the grounds of appeal stated that the Ld. AO has imposed penalty U/s 271(1)(b) of the Act, for non-compliance of notices but as per fact, notices U/s 142(1) were not served upon the assessee, thus question of penalty does not arise. As no notice was served, she was not in a position to attend the proceedings in the absence of receipt of notice.

7. It is submitted on behalf of assessee that she had not received any notices / order from the Income Tax Department and in the event on non-receiving the same, she was unable to attend any proceedings. The Ld. AO has imposed penalty U/s 271(1)(b) of the Act, only because of non-responding, is liable to be deleted.

8. Per contra, the Ld. DR relied on orders passed by both lower authorities.

9. As per section 271(1)(b) of the Act, the Ld. AO in the course of any proceedings under this Act, if satisfied that any person has failed to comply with a notice U/s 142(1) or 143(2) of the Act, may direct that such person shall pay by way of penalty a sum of ten thousand rupees for each such failure.

10. In this regard, it is submitted on behalf of assessee that the assessee has not received the assessment order passed U/s 144 r/w section 147 of the Act. He further submitted that the statutory notice u/s 148, 142(1) of the Act, were sent to assessee at addresses given below:

“1. B-15, Management Developmen Institute, Gurgaon,
Haryana.

2. RZ-40A, Street No. 3, Raghu Nagar, Pankha Road, New Delhi.”

It is further submitted that the assessee / appellant had since long time back settled at House no. 10, type IV , SSS- NIRE campus, wadala, Kalan, Kapurthala 144601, Punjab, and its return for AYs 2021-22, 2022-23 and 2023-24 were filed at the abovementioned addresses.

11. The Ld. CIT(A) stated in the order passed by him, that the assessee / appellant did not make any attempt to keep the Income Tax Department informed regarding change in her address. In this regard, per contra, the Ld. AR submitted that the assessee has already changed its address record in Income Tax by filing the correction form to NSDL portal along, so there was no requirement to inform the Department separately.

12. It is also further submitted that the assessee had not received the order passed U/s 144 r.w.s. 147 of the Income Tax Act, 1961 because of the following reasons:-

1. That the assessee's husband Sh. Abhishek Gupta was working at MDI Gurgaon and they were staying in Institute campus i.e. B-15, Management Development Institute, Sector-17, Gurgaon, Haryana but at the time when order was delivered in dispatch section in the office the

assessee's husband had already resigned from the above job and they left the above allotted accommodation of the Institute w.e.f. 26.04.2011, the copy of relieving order dated 26.04.2011 is attached.

2. That as per the assessment order dated 10.12.2018, it is reflected that another copy was served at the assessee's parental address i.e. Rz-40A, Street No. 3, Raghu Nagar, Pankha Road, New Delhi-110045 however the assessee's parents were shifted at House No. M-63, Mohan Garden, Block-M. Uttam Nagar, New Delhi-110059 in 2012.

3. That subsequently, the assessee's husband had joined Sardar Swaran Singh National Institute of Bio Energy (formally Sardar Swaran Singh National Institute of Renewable Energy), WadalaKalan, Kapurthala, Punjab-144601, under administrative control of Ministry of New and Renewable Energy, Govt. of India w.e.f. 27.04.2011, and a Govt. residence in its campus had allotted to assessee's husband i.e. House No. 10, Type-IV, SSS-NIRE Campus, Wadala Kalan Kapurthala, Punjab-144601, the copy of residential proof issued by his office letter no. 101/28/2011-NIRE/2599 dated 30.12.2011

4. That the assessee was also shifted along with her husband w.e.f. 27.04.2011, the copy of residential proof issued by SSS-NIRE letter no. 101/28/2011- NIRE/2600 dated 30.12.2011 and the copy of Aadhar Card (Punjab Address).

13. As per written submission on behalf of assessee that it comes to the knowledge of the assessee in July 2021, when she requested to her counsel to file her Income Tax Return for AY 2021-22 , and that time she came to know about demand as mentioned hereinbefore. Thereafter Income Tax Department provided a copy of

the assessment order on 31.12.2021 on the letter dated 21.12.2021 sent by assessee / appellant.

14. In our humble opinion compliance of notice U/s 142(1) of the Act possible in the circumstances when the same was properly served. In this case assessee / appellant submitted that she had been settled at Kapurthala, Punjab (address as mentioned hereinbefore) and alleged notices were sent to her on previous address, so because of change of address, she could not receive the same and so she prevented to comply with accordingly. For this purpose, she submitted copy of certificate dated 30.12.2011, copy of her Aadhar, Copy of Return of Income AYs 2021-22, 2022-23 and 2023-24. In the Return of Income for AYs 2021-22 2022-23 and 2023-24, PAN number of assessee AQRPG5348Q mentioned with address House no. 10, type IV, SSS- NIRE campus, wadala, Kalan, Kapurthala 144601, Punjab.

15. From the bare perusal of impugned order of the Ld. CIT(A), nowhere mentioned that notice issued U/s 142(1) of the Act was properly served on assessee / appellant or assessee / appellant intentionally ignored the notice or deliberately not complied with.

The Ld. CIT(A) in its impugned order only mentioning regarding issuance of notice only and did not cared and even ignored the fact about service of summons before reaching any conclusion. In our humble opinion, the ld. CIT(A) was supposed to verify the existing fact and thereafter passed order as per law, but without verifying the facts regarding proper service of notices, confirm the order passed by the Ld. AO mechanically.

16. There is no any material before us, which even show that notices U/s 142(1) issued by Department was duly served on assessee /appellant and even received by assessee /appellant. In the absence of proper service of notice / order, deliberate non-compliance can't be presumed and in other word it was not possible to comply with the notices / orders. It is submitted that address of assessee was changed due to aforementioned facts & circumstances and fact regarding change of address was came on NSDL portal and assessee in further assessment years, filed return of income in the changed address. So there is substance in appeal of assessee/ appellant.

17. From the facts mentioned hereinbefore, we are of considered opinion that no case of penalty U/s 271(1)(b) of the Act is made out against assessee / appellant, hence unsustainable in law and impugned penalty deserves to be deleted .

18. Consequently, this appeal of assessee / appellant is allowed as stated above and levied penalty U/s 271(1)(b) of the Act is hereby deleted.

Order pronounced in the Open Court on 30.07.2024

Sd/-
(GS PANNU)
VICE PRESIDENT

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Dated: 30/07/2024.

Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	29.07.24
Date on which the typed draft is placed before the dictating Member	29.07.2024
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	