

**IN THE INCOME-TAX APPELLATE TRIBUNAL “F” BENCH,
MUMBAI**
**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 3362/Mum/2024
(A.Y.2017-18)**

**ITA No. 3365/Mum/2024
(A.Y.2017-18)**

Jitendra Salunke B/4 72, Tenament, Vithhal Chavan Marg, Near Damodar Hall, Parel, Mumbai-400012	v/s. बनाम	Income-tax Officer- 42(2)(3) Kautilya Bhavan, Bandra Kurla Complex, Bandra(E), Mumbai-400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AVAPS2290K		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Poojan Mehta
Respondent by :	Shri Krishna Kumar

Date of Hearing	19.08.2024
Date of Pronouncement	22.08.2024

आदेश / O R D E R

PER RENU JAUHRI [A.M.] :-

These appeals are filed by the assessee against the orders of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 30.04.2024 & 19.06.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2017-18.

2. Grounds of appeal raised by the assessee in ITA No. 3365/Mum/2024 are as under:



“1. The National Faceless Appeal Centre (hereinafter referred to as the CIT(A)) erred in framing an ex parte order.

2. The CIT(A) erred in sustaining the penalty of Rs 10,000 levied under section 272A(1)(d) of the Act by the National Faceless Assessment Centre (hereinafter referred to as the NFAC).

The appellant contends that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have sustained the impugned penalty inasmuch as, the CIT(A) has not appreciated the facts of the case in its entirety.

The appellant further, contends that on the facts and in the circumstances of the case and in law, the notice(s) mentioned by the CIT(A) per impugned order have been sent on the e-mail address "vijay.sawant61@gmail.com" which is not the registered e-mail address of the appellant and as such, the impugned notice(s) are never received by the appellant.

The appellant further, contends that on the facts and in the circumstances of the case and in law, the CIT(A) have not provided with reasonable opportunity of being heard inasmuch as, the notice(s) mentioned per CIT(A) order is issued within short interval. Further, the CIT(A) before passing the order ought to have served the notice considering Rule 127 of Income-tax Rules, 1963 which provides for service of notice through various modes, however, have not done so.”

3. Grounds of appeal raised by the assessee in ITA No. 3362/Mum/2024 are as under:

“1. The National Faceless Appeal Centre (hereinafter referred to as the CIT(A)) erred in framing an ex parte order.

2. The CIT(A) erred in sustaining the penalty of Rs 14,282 levied under section 270A of the Act by the National Faceless Assessment Centre (hereinafter referred to as the NFAC).

The appellant contends that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have sustained the impugned penalty inasmuch as, the CIT(A) has not appreciated the facts of the case in its entirety.

The appellant further, contends that on the facts and in the circumstances of the case and in law, the notice(s) mentioned by the CIT(A) per impugned order have been sent on the e-mail address "vijay.sawant61@gmail.com" which is not the registered e-mail address of the appellant and as such, the impugned notice(s) are never received by the appellant.

The appellant further, contends that on the facts and in the circumstances of the case and in law, the CIT(A) have not provided with reasonable opportunity of being heard inasmuch as, the notice(s) mentioned per

CIT(A) order is issued within short interval. Further, the CIT(A) before passing the order ought to have served the notice considering Rule 127 of Income-tax Rules, 1963 which provides for service of notice through various modes, however, have not done so.”

4. Brief facts in relation to ITA No. 3365/Mum/2024 are that a penalty u/s 272A(1)(d) of the Act of Rs. 10,000/- was imposed by the AO vide order dated 20.10.2023. This penalty was levied on the ground that the assessee did not respond to various notices issued u/s 142(1) of the Act. Aggrieved with the penalty order, the assessee filed an appeal before NFAC/CIT(A) on 08.02.2024. Despite several notices issued by the Ld. CIT(A), no compliance was made by the assessee. Accordingly, the penalty order was upheld by the by the Ld. CIT(A) vide his order dated 19.06.2024.

5. Brief facts of ITA No. 3362/Mum/2024 are that the assessee's case for AY 2017-18 was reopened u/s 147 of the Act on the basis of incriminating material found during a survey u/s 133A of the Act, conducted at the premises of Shri. Vijay Sawant. The assessment order was passed u/s 147 r.w.s. 144 r.w.s. 144B of the Act, after making various additions on account of under-reporting/misreporting of income. Penalty proceedings u/s 270A were initiated for such under-reporting/misreporting of income. Subsequently, vide order dated 05.01.2024, penalty of Rs. 14,282/- was imposed u/s 270A of the Act. Aggrieved with this order, the assessee filed an appeal before CIT(A)/NFAC on 08.02.2024. Since, no compliance was made to the notices issued by the Ld. CIT(A), the penalty order of the AO was upheld.



6. Before us, Ld. AR pointed out that no notices were received by the assessee from the office of the CIT(A). It was pointed out that the assessee had given email address as ijitendrasalunke@gmail.com in form No. 35. Moreover, assessee had explicitly mentioned 'No', in response to the question in form 35 as to whether notices/communications may be sent on email. However, the notices were sent on a different email and not on the email mentioned in form 35. Apparently, none of the notices issued by the department has been received by the assessee. Accordingly, we deem it proper to restore both the appeals to Ld. CIT(A) for giving proper opportunity before deciding the appeals afresh on merits.

7. In the result, appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 22.08.2024.

Sd/-

PAVAN KUMAR GADALE

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 22.08.2024

अनिकेत सिंह राजपूत/ स्टेनो

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT



ITA No. 3362,3365/Mum/2024
A.Y. 2017-18
Jitendra Salunkhe

4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.