

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.3364/M/2024  
Assessment Year: 2016-17**

<b>Mr. Jitendra Salunke,</b> B/4 72, Tenament, Vithhal Chavan Marg, Near Damodar Hall, Parel, Mumbai Maharashtra- 400 012 <b>PAN: AVAPS2290K</b>	Vs.	<b>Income Tax Officer- 42(2)(3),</b> Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051 Maharashtra
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Poojan Mehta, A.R.  
Revenue by : Shri Dinesh Chourasia, Sr. D.R.

Date of Hearing : 19 . 08 .2024  
Date of Pronouncement : 30 . 08 .2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 30.04.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2016-17.

**2.** In the instant case, during the assessment proceedings the notices dated 10.01.2023 & 31.01.2023 u/s 142(1) of the Act were issued served to the Assessee on the registered mail ID, fixing the hearings on 25.01.2023 and 07.02.2023 in the case reopened by the Assessing Officer (AO) u/s 147 of the Act. However, the Assessee did not respond to the said notices. Therefore, penalty proceedings u/s 271(b) of the Act were initiated and vide show cause notice dated 06.03.2023 the Assessee was show caused. In response, the Assessee submitted his response on 15.03.2023. Thereafter, another show cause notice was issued on 30.08.2023, in response to which the Assessee made no response. Therefore, the AO by observing that the Assessee has no explanation to offer for failing to comply with the notices dated 25.01.2023 and 07.02.2023 u/s 142(1) of the Act, imposed a penalty of Rs.20,000 (Rs.10,000/- on each default).

**3.** The Assessee, being aggrieved, challenged the levy of penalty by filing first appeal before the Ld. Commissioner, who though issued four notices to the Assessee, however, the Assessee failed to respond to the notices sent and therefore in the constrained circumstances, the Ld. Commissioner affirmed the penalty by dismissing the appeal of the Assessee.

**4.** The Assessee, being aggrieved, is in appeal before us. The Ld. Counsel of the Assessee at the outset, demonstrated that the Assessee is not highly educated and therefore not well versed with handling of his e-mail account and as such was not aware of the income tax proceedings initiated by the Income Tax Department against him and in fact the notices/communications were being sent

on the email address mentioned by the erstwhile Income Tax Professional, who never informed the Assessee regarding the penalty proceedings initiated by the Department. The Assessee was even occupied in taking care of his two children who are having more than 50% disability and his mother and other family members who have also been expired on 29-03-2022 and 31-07-2023. The Assessee only came to know about impugned order in the month of February 2024 when he received the communication from the Department for recovery of outstanding demand and therefore the penalty may be deleted. The Ld. Counsel Mr. Poojan Mehta by drawing our attention further to form No.35 has submitted that in the first page of form No.35 where the details of personal information have been given, the Assessee in response to the question "**whether notices/communication may be sent on email**" the Assessee specifically replied "**No**". However, still the Ld. Commissioner issued the notices through e-mail which resulted into non-compliance by the Assessee. From the notices sent by the Ld. Commissioner, it also appears that notices dated 01.03.2024, 03.04.2024 & 09.04.2024 in fact were sent at the email address i.e. [vijaysawant61@gmail.com](mailto:vijaysawant61@gmail.com) which in fact pertains to the erstwhile income tax professional, whereas it is a fact that in form No.35 email address provided by the Assessee is [Ijitendrasalunke@gmail.com](mailto:Ijitendrasalunke@gmail.com) and therefore the Assessee could not get proper opportunities before the Ld. Commissioner, thus the penalty may be deleted.

**4.** On the contrary, the Ld. D.R. refuted the claim of the Assessee.

**5.** We have heard the parties and perused the material available on record. The reason submitted by the Assessee for non-appearance before the AO in response to the notices sent u/s 142(1) of the Act during the reopening proceedings u/s 147 of the Act and before the Ld. Commissioner appellate proceedings prima-facie seems to be genuine and un-intentional, as the Assessee's sons are disabled children and even otherwise the Assessee has lost his mother and other family members. Even despite mentioning specifically in response to the question "whether notices or communication may be sent on email", the Assessee specifically mentioned "No" in the first page of form No.35, but still the Ld. Commissioner issued the notices on the email address of the erstwhile income tax professional of the Assessee, which goes to show no-application of mind and non-granting of opportunity of being heard to the Assessee and/or to substantiate his case before the Ld. Commissioner and therefore the impugned order is liable to be set aside. Though in the open court, we have expressed our opinion to set aside the impugned order and remand the instant case to the file of the Ld. Commissioner for decision afresh, however, considering the reason submitted by the Assessee for non-compliance before the AO in response to the notices issued u/s 142(1) of the Act and before the Ld. Commissioner in appellate proceedings and as the Ld. Commissioner failed to give proper opportunity of being heard to the Assessee and the penalty imposed is meagre amount and therefore for the substantial justice and for the ends of litigation, we are inclined to delete the penalty levied by the AO and affirmed by the Ld. Commissioner, however, with caution to the Assessee not to repeat similar mistake deliberately and intentionally in future.

6. In the result, the appeal filed by the Assessee stands allowed.

**Order pronounced in the open court on 30.08.2024.**

**Sd/-**  
**(OMKARESHWAR CHIDARA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.