

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH  
MUMBAI**

**BEFORE: SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
&  
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 4458/MUM/2024  
(Assessment Year : 2013-14)**

Rushikesh Jagdishchandra Naik 10, Shivneri, Pantnagar, 90 Feet Road Ghatkopar (East), Mumbai-400075.	Vs.	Assessment Unit, National Faceless Assessment Centre, Delhi-110001.
<b>PAN/GIR No. AAAPN7066R</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	None
Revenue by	Shri. R. R. Makwana, Sr. DR
<b>Date of Hearing</b>	<b>24/10/2024</b>
<b>Date of Pronouncement</b>	<b>24/10/2024</b>

**आदेश / O R D E R**

**PER SUNIL KUMAR SINGH (J.M):**

1. This appeal has been preferred against the impugned order dated 25.07.2024 passed in Appeal no. NFAC/2012-13/10069294 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-Tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2013-14, wherein learned CIT(A) has confirmed the penalty order dated 14.01.2022 passed u/s. 271(1)(b) of the Act.

2. The brief facts state that assessee did not file his return of income within the time allowed u/s. 139 of the Act for A.Y. 2013-14. Learned assessing officer passed order u/s. 144 r/w 147 r.w.s 144B on 29.09.2021 and initiated the penalty proceedings u/s. 271(1)(b). During the assessment proceedings, notice u/s. 142(1) of the Act was issued on 19.08.2021 requiring the assessee to furnish requisite details but assessee failed to comply. Penalty proceeding u/s. 271(1)(b) for not filing any response of notice u/s. 142(1) was initiated and minimum penalty of Rs. 10,000/- was imposed u/s. 271(1)(b) r/w section 274 of the Act. Assessee preferred an appeal before learned CIT(A), against the penalty order. Learned CIT(A) has confirmed the penalty order ex-parte.
3. The appellant assessee is in appeal before this Tribunal on the ground that learned CIT(A) has erred in confirming the penalty of Rs. 10,000/- even though the quantum order has been set aside by this Tribunal.
4. None responded for the appellant assessee. Learned DR is present. Perused records and heard learned DR in attendance.
5. Perusal of the records show that the assessee did not file return of income u/s. 139 of the Act within prescribed time. During the course of assessment proceedings, assessee did not respond to the notice dated 19.08.2021 issued u/s. 142(1) of the Act. Assessing officer therefore passed penalty order levying an amount of Rs. 10,000/-. We notice that the co-ordinate bench of this Tribunal, vide order dated 31.05.2024 passed in ITA No. 4850/MUM/2023 for A.Y. 2013-14, to

which, one of us was the party, has restored the matter back to the file of the learned assessing officer with a direction to the assessee to submit all the relevant details before the learned assessing officer within 90 days from the date of receipt of the order for deciding the matter afresh. It is further mentioned in the above referred ITAT order dated 31.05.2024, that the assessee did not receive the notice issued by the learned assessing officer as the e-mail ID belonged to his CA and there was also a change of residential address. It is further observed by the Tribunal that the request of assessee to call for the remand report from the learned assessing officer also seems to have been turned down by learned CIT(A). The non-compliance of notice dated 19.08.2021 issued u/s. 142(1) of the Act during the assessment proceedings is stated to have been caused due to non-receipt of notice due to non-communication of the receipt of above notice by assessee's CA. Learned CIT(A) has thus erred in not considering this material fact of non-receipt of notice, hence the impugned order is unsustainable.

6. In the result, the assessee's appeal is allowed. The impugned order dated 25.07.2024 and the penalty order dated 14.01.2022 are set aside.

Order pronounced on 24.10.2024.

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SUNIL KUMAR SINGH)**  
**JUDICIAL MEMBER**

Mumbai; Dated 24/10/2024  
Anandi Nambi, *Steno*

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**