

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member
And Shri Makarand V. Mahadeokar, Accountant Member**

**ITA No. 1532 /Ahd/2024
Assessment Year 2017-18**

Hareshkumar Bhojraj Sanmukhani, Prop. Of Sukhram Stores, B/H. Parvati Complex, Satyam Nagar, Nagarwel Hanuman Road, Post R.U. Vistra, Ahmedabad-380023 PAN: ADSPS6507K (Appellant)	Vs	The ITO, Ward-6(1)(1), Ahmedabad (Respondent)
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**Assessee by: Shri P.F. Jain, A.R.
Revenue by: Shri Nitin Vishnu Kulkarni, Sr. D.R.**

Date of hearing : 21-10-2024
Date of pronouncement : 24-10-2024

आदेश/ORDER

PER : SUCHITRA KAMBLE, JUDICIAL MEMBER:-

This is an appeal filed against the order dated 18-08-2024 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment year 2017-18.

2. The grounds of appeal are as under:-

“1) The learned CIT(A) grievously has erred in law and facts upholding in penalty of Rs. 10,000/- levied by the A.O. u/s 272A(1)(d) without appreciating the fact that there is no such default and the returned income has been accepted in the order passed on 28/03/2022.

(2) He has further erred in confirming penalty in as much as that in para 7 of the assessment order the A.O. has held that submissions of the assessee has been with verified documentary evidence, found to be correct and hence return income accepted.

(3) The upholding of penalty on the facts of the assessee when there is no default is submitted to be abuse of law.

(4) On the facts no penalty ought to have been levied.

(5) The appellant craves, to leave, to add and or modify any of ground appeal.”

3. The assessee filed return of income for assessment year 2017-18 declaring income at Rs. 6,53,080/-. After receiving information and analyzing the statement of bank account of ICICI bank, the Assessing Officer observed that there is a frequent cash deposits during the financial year 2016-17 thereby total credit of Rs. 1,41,66,000/- out of which Rs. 1,23,31,000/- is by cash deposit and Rs. 18,35,000/- is by transfer/cheque. The assessment order was passed u/s. 147 r.w.s. 144B on 28-03-2022 and the returned income of Rs. 6,53,080/- was accepted as assessee's income by Assessing Officer. The Assessing Officer initiated penalty u/s. 272A(1)(d) of the Income Tax Act, 1961 and issued notice on 06-08-2022 thereby stating that the notice dated 24-12-2021 issued u/s. 142(1) of the Act was not responded/not complied. In response to the show cause notice for initiation of penalty u/s. 272A(1)(d), the assessee filed reply. After taking cognizance of the same, the Assessing Officer levied penalty of Rs. 10000/-

4. Being aggrieved by the penalty order u/s. 272A(1)(d) of the Act, the assessee filed appeal before the Id. CIT(A). The Id. CIT(A) dismissed the appeal of the assessee

5. The Id. A.R. submitted that the assessee has filed the details as mentioned in para 3 of the assessment order and has complied all the earlier notices prior to notice u/s. 24-12-2021 and in fact the Assessing Officer has accepted the income stated by the assessee (declared by the assessee) and therefore the penalty u/s. 272A(1)(d) of the Act does not survive.

6. The Id. D.R. relied upon the assessment order and the order of the Id. CIT(A).

7. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that that all the notices issued u/s. 142(1) by the Assessing Officer was complied by the assessee thereby the finding details except the notice issued on 24-012-2021 but that cannot be treated as non-compliance of the notices as the assessee's documentary evidences has sufficed the case of the assessee and in fact the Assessing Officer in the assessment order has not pointed out any discrepancy to the details filed by the assessee and accepted the income declared by the assessee. Merely not complying with the lost notice cannot be held initiation of penalty u/s. 271A(1)(d) of the Act and in fact the Department has categorically contradicted in giving the finding in para 3 of the assessment order that the details were filed and in para 5 that the assessee neither responded to the above notice nor furnished detailed documentary evidences

in respect of the cash deposits. Thus, the penalty initiated and levied by the Assessing Officer u/s. 272A(1)(d) is not justifiable. Hence, the same is deleted. The appeal of the assessee is allowed.

8. In the resulted, the appeal of the assessee is allowed.

Order pronounced in the open court on 24-10-2024

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER
Ahmedabad : Dated 24/10/2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद