

**IN THE INCOME-TAX APPELLATE TRIBUNAL “E” BENCH,
MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 5390/MUM/2024
(A.Y. 2018-19)**

Kiran Babulal Jain, E 2901 Anmol Fortune Off M.G. Road Goregaon West, Maharashtra – 400 104	v/s. बनाम	The AO NFAC, Delhi
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AABPJ2692L		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	None
Respondent by :	Shri Hemanshu Joshi (Sr. DR)

Date of Hearing	26.11.2024
Date of Pronouncement	26.11.2024

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 18.08.2021 passed in respect of penalty order u/s. 272A(1)(d) of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2018-19.

The main grounds of appeal are as under:

- (i) *On facts, in the circumstances of the case and in law, the Ld. Commissioner of Income Tax(Appeals (NFAC), (The CIT(A)),*

the Assessing Officer NFAC (The A.O.) both collectively referred to as the authorities below erred imposing penalty u/s 272A(1)(d) of Rs 10,000 the Income tax Act, 1961 ("The Act)

(ii) Without prejudice to above the authorities below erred in ignoring that the appellant was prevented from compliance of assessment notices for including inter alia the pre- Covid 19 scare and post COVID-19 complication such as lockdown, absenteeism of staff and the hospitalization of the appellant himself and locking of appellant's e mail account.

(iii) The Ld. CIT(A) erred in attaching more importance to original notice dated 13.12.2019, which was just for original assessment window without calling for any specific detail from the appellant who filed return u/s 44AD.

3. As per the penalty order, the assessment was completed u/s 143(3) on 20/05/2021 at an income of Rs. 41,42,910/-. During the course of assessment proceedings, notice u/s 142(1) of the Income Tax Act, 1961 was issued on 13/12/2019 calling for information in connection with the pending assessment proceedings for the A.Y 2018-19. However, the assessee did not comply with the notice. In response to penalty notice dated 11/05/2021, the assessee has submitted his reply on 16.06.2021 through ITBA portal, reply of the assessee has been considered. As per submission of the assessee due to lockdown and spread of covid-19 he did not respond during the assessment proceedings. But the assessee failed to submit any documentary evidence/proofs in support of the submission for the period of non



compliance. Therefore, it was clear that the assessee's has not genuine for non compliance of the notice issued on 13/12/2019 u/s 142(1) of the Income Tax Act, 1961. In view of the above, the assessee was held to be in default u/s 272A(1)(d) of the Income Tax Act, 1961 for non-compliance of notices u/s 142(1) of the Income Tax Act, 1961 and the penalty of Rs. 10,000/- was imposed u/s 272A(1)(d) of the Income Tax Act, 1961.

4. The Id.CIT(A) in the subsequent appeal filed by the assessee observed that during the course of assessment proceeding, Assessing Officer had issued notice u/s 142(1) on 13.12.2019, requiring the appellant to furnish necessary details and documents within the stipulated time (i.e.30.12.2019). In the said notice details and documents regarding financial statements and details of goods exported/imported were called for. However, the appellant failed to comply with the same, any submission/details called for or even never sought adjournment for the same. In appellate proceeding, the appellant claimed that the notices were issued on 21.02.2020, 03.08.2020, 09.10.2020 and 08.12.2020 which were during the pandemic of Covid. During the period the area of his office in Mumbai was repeatedly declared as containment area. Transport services were not running and there was total staff absenteeism. The appellant himself tested positive



for COVID-19 and was hospitalized. In the circumstances compliances and collection of information was very difficult. However, said reason was not substantiated or corroborated through any other document or material in appellate proceedings. In fact, the penalty was levied for non-compliance of statutory notice u/s 142(1) issued on 13.12.2019 which was before the covid-19 erupted in the state of Maharashtra. Even first lock down in Mumbai was imposed in the month of March-2020. In the circumstances, appellant had enough time to comply with the notice u/s 142(1) dated 13.12.2019. Appellant further contended that his mail address Ows@India.com was used for filing income tax return and had been set-as the primary address for communication and subsequently India.com discontinued their portal without giving any intimation to him which create information gap about proceeding. Appellant's contention has been considered but found incorrect as appellant's primary e-mail id has been 'ows@live.in' and not 'ows@india.com' as claimed. Notice u/s 142(1) of the I.T. Act dated 13.12.2019 was issued at the e-mail id 'ows@live.in. In the ITR filed for year under consideration i.e A.Y. 2018-19 as well as ITR for subsequent years A.Y. 2019-20 to 2023-24, appellant has mentioned same e-mail id (ows@live.in) on which notice u/s 142(1) dated 13.12.2019 was issued. In fact, in Form-35 (appeal memo) appellant has mentioned his e-mail id as 'ows@live.in'



on which notice u/s 142(1) was issued in assessment proceeding. Without prejudice to above, from the screen shoot submitted by appellant it cannot be verifiable the date of creation of mail address used by appellant on said portal and also when India.com has discontinued its portal. Even screen shoot did not contain the date when it was taken. Appellant also contended that his part-time accountant suddenly passed away which caused more information stoppages and gap owing his dependency upon the accountant. However, appellant failed to substantiate his claim with any documentary evidences like proof of appointment of part-time accountant and the copy of death certificate of accountant or any other document in support his claim. The conduct of the appellant clearly indicated a passive attitude and inaction towards any statutory notice issued by the department. The appellant has failed to furnish any response or credible material to establish the reasons behind the failure to comply with the statutory notices. The ground stating that reasonable opportunity was not provided by A.O. is found to be baseless as the facts on record show that the appellant just did not cooperate and furnish details regarding the goods exported/imported in given manner during assessment proceedings. This was the main issue in the statutory notices issued and duly served on him. The assessment also had to be completed by the A.O. u/s 144 of the Act because of non-



compliance by the appellant. Accordingly, the levy of penalty u/s 272A(1)(d) of the Act was upheld. The grounds of appeal were dismissed.

5. When the case was called out for hearing, there was none present for the assessee. However, as per letter dated 24.11.2014 on record, the assessee sought to waive physical hearing. In the said submission, it has repeated the same contentions as made before the Id.CIT(A). There is no rebuttal from his end to the detailed observations of the appellate authority. In such a situation, we do not find any infirmity in the conclusion drawn by the authorities below and uphold the penalty order, dismissing the appeal.

6. **In the result, the appeal is dismissed.**

Order pronounced in the open court on 26/11/2024.

Sd/-

SANDEEP GOSAIN

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य / ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 26.11.2024

Lubhna Shaikh / Steno

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



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

