

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.213/Nag./2024
(Assessment Year : 2020-21)

Anirudha Harihar Mandal
335, New Nandanwan, Nagpur 440 009
PAN – AGOPM9294J

..... Appellant

v/s

Income Tax Officer
Ward-1(1), Nagpur

..... Respondent

Assessee by : Smt. Veena Agrawal
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 18/11/2024

Date of Order – 28/11/2024

ORDER

PER K.M. ROY, A.M.

The captioned appeal by the assessee is against the impugned order dated 16/02/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2020-21.

2. The following grounds have been raised by the assessee:-

"1. Whether in the fact and circumstances of the case the Hon'ble CIT(A) is justified in affirming the levy of a penalty under Sec. 272A(1)(d) to the tune of Rs. 40,000/-.

2) Whether in fact and circumstances of the case the Hon'ble CIT(A) is justified in passing an order of penalty under Sec 272A(1)(d) in breach of Principle of Natural Justice.

3) The appellant craves leave to add, alter, modify and withdraw any grounds before or during the course of appellate proceedings.

3. The assessee is an individual and engaged in the business of Mining and Quarrying in the relevant year under consideration. For the relevant year under consideration, the assessee filed his return of income dated 31/03/2021, declaring total income ₹ Nil, with current year business loss of ₹ 14,50,430. Further the assessee also filed Tax Audit Report in Form no.3CB and 3CD dated 30/09/2020. The Assessing Officer alleged in assessment order dated 06/09/2022, passed under section 272A(1)(d) of the Act that the assessee has not made compliance of various notices issued under section 142(1) of the Act on the following dates i.e., on 26/10/2021, 06/12/2021, 23/01/2022, and 21/02/2022.

4. On appeal, the learned CIT(A) passed the impugned order dated 01/11/2023, whereby, confirming the impugned addition of ₹ 6,72,64,097, which was made by the Assessing Officer.

5. Before us, the learned Authorised Representative appearing for the assessee submitted that the assessee did not receive any notices and the e-mail I.D. on which notices were sent did not belong to the assessee and thus the assessee was not aware of the fact that any proceeding is being carried out by the Department. The assessee would have diligently and actively participated in the assessment proceeding had it been known to him that any such assessment proceeding was in progress. The Assessing Officer passed an order dated 06/09/2022 wherein penalty order under section 272A(1)(d) of the Act, is passed against the assessee leading to a demand of ₹ 40,000/-.

6. The learned Departmental Representative vehemently supported the order of the authorities below and prayed that the concurrent findings of the learned CIT(A) in his impugned order need not be disturbed.

7. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. We find that the penalty under section 272A(1)(d) of the Act is not leviable since all the notices were issued during Nationwide Pandemic, which is an undisputable fact. We further find that there is no enabling provision to levy penalty on every individual non-compliance since law does not permit to multiply the penalty and in lieu thereof, the prayer made by the learned Authorised Representative appearing for the assessee for quashing the impugned order passed by the learned CIT(A) is found justified. We also find sufficient force and reasonable cause for non-compliance during the Pandemic period. Moreover, the impugned penalty order is cryptic and does not address as to the nature of non-compliance against the provisions of section 142(1) of the Act. The learned Authorised Representative for the assessee made out a strong case which deserves to be succeeded. Consequently, we hereby quash the impugned penalty order passed by the Assessing Officer and confirmed by the learned CIT(A) by allowing all the grounds raised by the assessee.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 28/11/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 28/11/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur