

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH-C : NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No.3790/Del/2024
Assessment Year : 2012-13

Shri Ishwar Singh Kaushik,
H.No.A-83, Gali No.5,
Vijay Colony,
Bawana,
Delhi – 110 039.
PAN : AIKPK9936B.
(Appellant)

Vs. Income Tax Officer,
Ward-67(1),
New Delhi.

(Respondent)

Appellant by : None.
Respondent by : Shri Om Parkash, Senior DR.

Date of hearing : 03.12.2024
Date of pronouncement : 10.12 .2024

ORDER

Per Bench :

This appeal by the assessee is arising out of the order of learned CIT(A), NFAC in appeal No. NFAC/2011-12/10111576, order dated 25th June, 2024. The assessment was framed by the Assessing Officer of NFAC under Section 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. The penalty under dispute was levied by the Assessing Officer of NFAC under Section 271(1)(b) of the Act vide his order dated 2nd February, 2022. The only issue in this appeal by the assessee is as regards to the order of learned CIT(A) confirming the levy of penalty under Section 271(1)(b) of the Act amounting to Rs. 30,000/- on account of alleged failure of the assessee to furnish reply/evidences and non-attendance to the notice issued under Section 142(1) of the Act dated 18th July, 2019, 28th October, 2019 and 25th November, 2019.

3. Going by the grounds of appeal and the nature of issue, we notice that the issue is simply and need no representation. None is present on behalf of the assessee. However, Revenue is represented by Shri Om Parkash, learned Senior DR.

4. We notice from records and according to the information available with the Department for financial year 2011-12 relevant to assessment year 2012-13, assessee deposited cash of Rs. 16,64,000/- in savings bank account. Accordingly, notice under Section 148 of the Act dated 27th March, 2019 was issue and duly served. As there was no response from the assessee, assessee's case was selected for scrutiny assessment and accordingly, notices under Section 142(1) dated 18th July, 2019 and 28th October, 2019 and finally a show cause notice dated 25th November, 2019 were issued. The assessment was completed ex-parte and added cash deposit of Rs. 16,64,000/- as unexplained money under Section 68 of the Act. In the meantime, the Assessing Officer started penalty proceedings under Section 274 read with Section 271(1)(b) of the Act vide notice dated 14th December, 2019. The Assessing Officer noted that the assessee has not complied with notices issued under Section 142(1) dated 18th July, 2019, 28th October, 2019 and 25th November, 2019. As the assessee has not complied with the above notices nor furnished any explanation, Assessing Officer levied penalty for three violations i.e., non-compliance of notice under Section 142(1) dated 18th July, 2019, 28th October, 2019 and 25th November, 2019 and imposed penalty of a sum of ₹30,000/- i.e., 10,000/- for each violation. Aggrieved, assessee preferred appeal before learned CIT(A). Learned CIT(A) also confirmed the action of the Assessing Officer.

5. We have heard the learned Senior DR and gone through the facts and circumstances of the case. We noted that the main claim of the assessee in the grounds of appeal is that upto the stage of finalization of the assessment order dated 12th December, 2019 and even thereafter, except service of notice dated 05th July, 2021 which was primarily replied, these notices were delivered at unknown address and assessee was unaware of the said notices. We noted that there is no evidence that there is service of these notices issued under Section 142(1) dated 18th July, 2019, 28th October, 2019 and 25th November, 2019. We noted from the order of learned CIT(A) who only presumed that the notices were served basis on that he has been served the assessment order. In our view, this presumption for levy of penalty is not sufficient. Once it is not established that the notices issued under Section 142(1) dated 18th July, 2019, 28th October, 2019 and 25th November, 2019 were not served on the assessee, we cannot sustain the levy of penalty.

Hence, we delete the penalty and reverse the orders of learned CIT(A) and that of the Assessing Officer.

6. In the result, the appeal of the assessee is allowed.

Above decision was pronounced in the open Court on 10-12-2024.

Sd/-

**(NAVEEN CHANDRA)
ACCOUNTANT MEMBER**

Sd/-

**(MAHAVIR SINGH)
VICE PRESIDENT**

VK.

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar