

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "D", MUMBAI  
BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER  
AND  
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.4761/M/2024**  
[Assessment Year: 2014-15]  
&  
**ITA No.4760/M/2024**  
[Assessment Year: 2016-17]

<b>Deejay Stocks Private Limited</b> 401, Shangrilla Apt., L. T. Road, Borivali (West), Mumbai- 400092. <b>PAN: AADC6404H</b>	<b>Vs.</b>	<b>DCIT 4(2)(1)</b> Erstwhile DCIT 12(2)(2), Aayakar Bhava, Maharishi Karve Road, Mumbai- 400020.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

**Assessee by** : None

**Revenue by** : Shri R. R. Makwana, Sr. D.R.

**Date of Hearing** : 07.11.2024

**Date of Pronouncement** : 20.12.2024

**ORDER**

**Per Beena Pillai, JM:**

Present penalty appeals are filed by the assessee against separate orders dated 19.07.2024, passed by Ld.CIT(A)/ NFAC for



Assessment Year 2014-15 & 2016-17 on following grounds of appeal:

**Grounds in ITA No.4761/M/2024**

1. ON NATURAL JUSTICE:

1.1. *In the facts and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) ["the Ld. CIT(A)"] erred in confirming the action of the Learned Assessing Officer ["the Ld. AO"] in imposing a penalty of Rs.30,000/- u/s 271(1)(b) of the Income Tax Act, 1961 ["the Act"] in gross violation of principles of natural justice.*

2. ON MERITS:

2.1. *In the facts and circumstances of the case, and in law the Ld. CIT(A) erred in confirming the action of the Ld. AO in imposing a penalty of Rs.30,000/- u/s 271(1)(b) of the Act on account of non-response by the Appellant to certain notices issued online by the Assessing officer.*

2.2. *While doing so the Ld. CIT(A) failed to appreciate that:*

i. *The penalty so levied is in stark contravention of the extant law and based on irrelevant considerations while ignoring the relevant material, evidences and considerations;*

ii. *The levy of such a penalty is not mandatory and the Ld. AO erred in not exercising fair and just discretion in the matter, and; The Appellant had duly explained that the reasons for non-appearance/ non-response were that the Director of the Appellant responsible for the necessary compliances was in a disturbed state of mind due to family issues and since the notices were issued online, he was not aware about the same and could not reply in due time;*

2.3. *In the facts and circumstances of the case and in law the penalty levied by the Ld. AO as affirmed by the Ld. CIT(A) deserves to be deleted in toto.*

3. *The Appellant craves leave to add, amend, alter, delete or modify any or all the above grounds of Appeal."*

**Grounds in ITA No.4760/M/2024**

" ON NATURAL JUSTICE:

1.1. *In the facts and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) ["the Ld. CIT(A)"] erred in confirming the action of the Learned Assessing Officer ["the Ld. AO"] in imposing a penalty of Rs.30,000/- u/s 271(1)(b) of the Income Tax Act, 1961 ["the Act"] in gross violation of principles of natural justice.*



2. ON MERITS:

- 2.1. *In the facts and circumstances of the case, and in law the Ld. CIT(A) erred in confirming the action of the Ld. AO in imposing a penalty of Rs.30,000/- u/s 271(1)(b) of the Act on account of non-response by the Appellant to certain notices issued online by the Assessing officer.*
- 2.2. *While doing so the Ld. CIT(A) failed to appreciate that:*
  - i. *The penalty so levied is in stark contravention of the extant law and based on irrelevant considerations while ignoring the relevant material, evidences and considerations;*
  - ii. *The levy of such a penalty is not mandatory and the Ld. AO erred in not exercising fair and just discretion in the matter; and; The Appellant had duly explained that the reasons for non-appearance/ non-response were that the Director of the Appellant responsible for the necessary compliances was in a disturbed state of mind due to family issues and since the notices were issued online, he was not aware about the same and could not reply in due time;*
- 2.3. *In the facts and circumstances of the case and in law the penalty levied by the Ld. AO as affirmed by the Ld. CIT(A) deserves to be deleted in toto.*
3. *The Appellant craves leave to add, amend, alter, delete or modify any or all the above grounds of Appeal.”*

**Brief facts of the case are as under:**

2. The assessee was engaged in the business of trading in shares, securities, Futures & Options. For A.Y. 2014-15, the original return was filed on 30/10/2014 declaring total income of Rs.5,51,600/-. For A.Y. 2016-17, the original return of income was filed on 17.10.2016 declaring total loss of Rs.7,52,83,016/- under normal provisions and book profit at loss of Rs.7,52,83,016/- u/s 115JB of the Act. The case was selected for scrutiny for years under consideration and notice u/s. 143(2) was issued alongwith notices



u/s 142(1) of the Act and questionnaire, calling for various details has been issued from time to time.

**2.1.** On 31.03.2021, a Notice u/s. 148 of the Act was issued on 31.03.2021 with the direction to submit return of income. It is submitted that during the reassessment proceedings, Director of the assessee, looking after the company affairs, was busy with his fathers medical issues that slowly got worst. At same time Director's mother was also suffering severely and later passed away on 6/09/2022. The assessee submitted that, pending the assessment proceedings, the Director could not concentrate on other work and all the notices went unattended.

**2.2.** It is further submitted that, the Chartered Accountant of the assessee changed, and the assessee was not able to take necessary steps in order to file responses to the notice received u/s 148 of the Act and subsequent notices issued u/s 142(1). The Ld.AO in Faceless assessment passed order u/s.147 & u/s.144 r.w.s.143(3) dated 17.03.2022 making addition in the hands of the assessee.

**2.3.** It is submitted that, on receiving call from the Tax demand Recovery, the erstwhile Director got help of a Consultant to review all Notices & Orders, contented earlier professional to calculate data & records, in order to file present appeal at the earliest. The assessee also preferred appeal before the Ld.CIT(A) against additions made u/s 147 r.w.s 144 of the act on 23.03.2022.



**2.4.** The Ld. AO in the mean time, issued notices u/s 271(1)(b) of the Act, for both years under consideration. However due to the reason mentioned above the assessee could not file any response to the notice issued and the Ld. AO passed order u/s 271(1)(b) levying penalty of Rs.30,000/-.

Aggrieved by the order of the Ld.AO, assessee filed appeal before Ld.CIT(A).

**3.** The Ld.CIT(A) dismissed the appeal of the assessee for years under consideration by observing as under:

*“4.3 In the instant case, the assessee was given multiple opportunities to comply with the notices and provide the required information. The failure to respond to notices under sections 148 and 142(1) without any reasonable cause or explanation significantly fails the assessee's position. The order indicates adherence to the principle of natural justice, as several notices and opportunities were provided to the assessee to present their case, the penalty of Rs. 30,000 seems appropriate given the repeated non-compliance. Presently, the assessee would need to demonstrate reasonable cause for non-compliance to challenge this penalty effectively. The show cause notices issued under section 274 read with section 271(1)(b) were intended to give the assessee an opportunity to explain non-compliance. The assessee's failure to respond to these notices further justifies the imposition of the penalty.*

*The appellant in its written submission dated 26.06.2024 has not submitted any convincing reasonable cause for total non-compliance with the statutory notices. The notices were sent by AO on the registered e-mail address of the appellant on which the present appeal notices are being sent. The email id jdedhia44@gmail.com is Last Used E-Mail ID by any ITBA User and Primary Email Id as per e-filing profile of Assessee. The only issue remains that there seem no reason by the appellant for complete non-compliance towards statutory notices. I do not find any considerable reasonable cause from the side of assessee to allow the appeal. In such circumstances, I hold that this penalty was imposed in accordance with the provisions of Section 271(1)(b) of the Income-tax Act, 1961. Overall, the AO's actions seem to be justified and consistent with the provisions of the*



*Income-tax Act, 1961, considering the non-compliance by the assessee and the failure to provide satisfactory explanations regarding non-compliance. Penalty of 30,000/- is sustained and the appeal of the assessee is dismissed.”*

Aggrieved by the order of Ld. CIT(A), the assessee is in appeal before this *Tribunal*.

**4.** The Ld.AR submitted that, there was bonafide reason for non appearance before the authorities below are genuine. He submitted that, the medical treatment of the Director’s Father and demise of Director’s Mother led the situation to worsen as the Director could not pay any attention to the day to day affairs of the assessee. It was under such circumstances that the notices issued by the Ld.AO were not complied with.

**4.1.** The Ld.AR submitted that, the documents related to medical treatment of Director’s Father and Death Certificate of Director’s Mother would explain and substantiate the reasonableness for non appearance even before the Ld.CIT(A). He thus prayed for deletion of penalty u/s. 271(1) (b) r.w.s.273B of the act.

**4.2.** On the other hand, the learned Departmental representative strongly supporting the order of the Commissioner of Income-tax (Appeals) submitted that the Assessing Officer has given sufficient time for the assessee to appear for hearing. The assessee neither appeared nor sought any adjournment, therefore, the Ld.AO was right in levying of penalty for non-compliance with the statutory



notices issued under sections 143(2) and 142(1) of the Act and his order should be upheld.

We have perused the submissions advanced by both sides in light of records placed before us.

**5.** Admittedly, there was a failure on the part of the assessee to respond to the noticed issued by the Ld.AO during assessment proceeding. However, the Legislature provides for immunity from levy of penalty wherever there was a reasonable cause for not complying with the provisions of the Income-tax Act. In other words, section 273B provides for immunity from penalty wherever there was a reasonable cause.

**5.1.** An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or guilty of conduct, contumacious or dishonest, or acted in conscious disregard to its obligation. Penalty will not also be imposed merely because it is lawful to do so.

**5.2.** Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on consideration of all relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from



a *bona fide* belief that the offender is not liable to act in the manner prescribed by the statute.

**5.3.** In the present facts of the case, the Director who underwent huge emotional hardship was the key person responsible for the tax disputes of the assessee. It is also not contradicted that the medical documents filed by the assessee related to the parents of the said Director is false. Therefore, there was sufficient cause on behalf of the assessee for not able to respond to the notices issued during the assessment proceedings due to illness of the Directors father and demise of his mother, along with the fact that assessee had changed the professional during the year to act upon the tax disputes.

**5.4.** Therefore, the assessee is entitled for exemption under section 273B of the Act. In view of the above, we are unable to uphold the order of the authorities below. We thus direct to delete the penalty levied under section 271(1)(b) of the act in the hands of the assessee.

**Accordingly the grounds raised by the assessee stands allowed.**

**In the result, the appeal filed by the assessee stands allowed.**

**Order pronounced in the open court on 20-12-2024.**

**Sd/-**  
**RENU JAUHRI**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**BEENA PILLAI**  
**JUDICIAL MEMBER**



Mumbai, Dated: 20.12.2024.  
*Snehal C. Ayare, Stenographer/Dragon*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)

**ITAT, Mumbai**