

IN THE INCOME TAX APPELLATE TRIBUNALz3wsx
“D” BENCH, MUMBAI
BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER
ITA No.4138/M/2024
Assessment Year: 2017-18

R B Traders Cornor of Nawab Tank Road, Opposite Dockyard Road Railway Station, Reay Road, Mumbai- 400010. PAN: AADFR4534M	Vs.	CIT(A)- Income Tax Department, NFAC Room No.615, 6 th Floor, Piramal Chambers, Lal Baug, Mumbai- 400012.
Appellant	:	Respondent

Present for:

Assessee by

: Shri Lakhi Kalani

Revenue by

: Shri R. R. Makwana (Sr. DR)

Date of Hearing

: 14.11.2024

Date of Pronouncement

: 16.12.2024

ORDER

Per Beena Pillai, JM:

Present penalty appeal filed by the assessee arises out of order dated 28.06.2024 passed by NFAC Delhi/ Ld. CIT(A) for A.Y. 2017-18 on following grounds of appeal:

1. “ On the facts and circumstances of your appellant's case and in law the learned Commissioner of Income Tax Appeal erred confirming levy of penalty of Rs. 50000/- under section 272A(1)(d) of Income Tax Act, 1961
2. Your appellant craves to leave or add any ground of appeal.”

Brief facts of the case are as under:

2. Assessee is a partnership firm engaged in the business of trading in petroleum products and is authorized dealer for HPCL. The assessee filed its return of income on 17.11.2017 declaring total income of Rs.3153380/-. The same was processed u/s. 143(1) of the act on 26.07.2018

2.1. In the assessment order, the Ld.AO mentioned that, the assessee was issued notice u/s. 143(2) of the act dated 28.09.2018 and 142(1) was issued on 24.06.2019, 29.07.2019, 17.10.2019 and 27.11.2019. It is submitted that after due compliance the assessment was completed u/s. 143(3) based on the details called by the Ld.AO on 27.12.2019 by making an addition of Rs.7,70,994/- to the return income. It is submitted that the Ld.AO initiated penalty u/s. 270 A of the act in the assessment order.

2.2. Subsequently, penalty proceedings u/s. 272(A)(1)(d) was initiated for failure to answer the question and comply to notices issued u/s. 142 (1) and or 142 (2) of the act. The Ld.AO vide order dated 15.02.2022 passed the penalty order levying penalty of Rs.50,000/- by observing that the assessee failed to comply with notices issued in connection to scrutiny assessment proceedings pertaining to A.Y. 2017-18.

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

3. The Ld. CIT(A) rejected the contentions of the assessee by observing as under:

“8. Decision:

8.1. During the course of appellate proceedings, the appellant has not submitted any evidence or filed any cogent reasons for not complying with the notices issued within the meaning of section 273B of the Act. The levy of penalty is subject to section 273B which provides that no penalty shall be imposable if the assessee proves that there was a reasonable cause for the said failure. However, in this case no such reasonable/sufficient cause has been put forth by the appellant. Even in course of appellate proceedings number of opportunities were provided to the appellant. However the appellant other than taking adjournments has not submitted any information, In reply to one of the adjournments, the appellant stated that it had preferred an appeal against the entire additions made in assessment order. However, the levy of penalty u/s 272A(1)(d) is related to non-compliance to notices issued by the AO in course of assessment proceedings. Even if the appellant gets relief on the additions made, still it cannot escape from the clutches of section 272A(1)(d).

8.2. In view of the above, as the appellant has not proved any reasonable cause in not complying with the notices issued u/s 143(2)/142(1), the action of the AO in levying the penalty u/s 272A(1)(d) amounting to Rs.50,000/- is upheld and the relevant grounds are dismissed.”

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

4. The Ld.AR at the outset submitted that, the notices as narrated by the Ld.AO in the penalty order was issued to the assessee, and this is verifiable from assessee’s ITBA Portal. He submitted that, the basic facts pertaining to the scrutiny assessment narrated in the penalty order is also incorrect. He thus submitted that, penalty u/s. 272 A (1)(d) is wrongly levied on the assessee.

4.1. The Ld.AR further pointed out that, in the scrutiny assessment order passed u/s. 143(3), there is no initiation of penalty u/s. 272A (1)(d) by the Ld.AO. Referring to para 3 and para 4 of the scrutiny

assessment order, the Ld.AR submitted that, the assessee responded to all notices issued through authorized representatives and complied with the details by attending the hearing from time to time. The Ld.AR thus submitted that in the present facts does not warrant, levy of penalty u/s. 272A (1)(d) of the act.

4.2. On the contrary, the Ld.DR though could not controvert the above observations of the assessee submitted that the issue may be remanded to the Ld.AO for necessary verification regarding the issuance of notices as observed in the penalty order vis-à-vis the ITBA portal.

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

5. The assessee in the paper book has filed screen shots of the ITBA portal of e-proceedings at the time of scrutiny assessment. Admittedly, the details and dates of notices mentioned by the Ld.AO in the penalty order does not tally with the dates of notices as per the ITBA portal.

5.1. We also note that, the Ld.AO picked up the details regarding the scrutiny assessment from different facts as the scrutiny assessment order in the case of the assessee was passed on 27.12.2019 as against 24.12.2019 observed by the Ld.AO in the penalty order.

5.2. In the interest of justice, we remit this issue back to the Ld.AO for necessary verification of notice, as per the ITBA portal and the notices as mentioned in penalty order passed by the Ld.AO. In the



event it is found that the notices mentioned as in the penalty order is incorrect, no penalty is leviable on the assessee. If at all the alleged notices as per the penalty order have been issued, then why the same is not appearing on assessee's ITBA portal, considering the fact that during the relevant period the proceedings was faceless. And once the notice alleged in the penalty order has never been issued, assessee cannot be put to task with the levy of penalty u/s. 272A(1)(d) of the Act. With the above directions we direct the Ld.AO to consider the levy of penalty on the assessee in accordance with law.

Accordingly, grounds raised by the assessee stands partly allowed for the statistical purposes.

In the result, appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 16.12.2024.

**Sd/-
PRABHASH SHANKAR
ACCOUNTANT MEMBER**

**Sd/-
BEENA PILLAI
JUDICIAL MEMBER**

Place: Mumbai,

Dated: 16.12.2024

Snehal C. Ayare, Stenographer/ Dragon

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Ld.DR, ITAT, Mumbai



- 4. Guard File
- 5. CIT

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai