

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "एस.एम.सी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCHES, "SMC" CHANDIGARH
HEARING THROUGH: PHYSICAL MODE
श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA No.941/Chd/2024
निर्धारण वर्ष / Assessment Year : 2011-12

Jarnail Singh Gill Vill: Salempura, PO: Sidhwanbet, Tehsil Jagraon, Ludhiana	बनाम	The ITO Ward-1, Jagraon
स्थायी लेखा सं. / PAN NO: DLQPS0773N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Ashwani Kumar, C.A
राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 06/01/2025
उद्घोषणा की तारीख/Date of Pronouncement : 09/01/2025

आदेश/Order

PER VIKRAM SINGH YADAV, AM

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/NFAC Delhi dt. 27/02/2024 pertaining to Assessment Year 2011-12 wherein the limited issue relates to sustenance of levy of penalty amounting to Rs. 50,000/- under section 271(1)(b) of the Act.

2. At the outset, there is a delay in filing of the appeal as pointed out by the Registry. After hearing both the parties and the considering the affidavit of the assessee placed on record, I find that there was reasonable cause in the delayed filing of the appeal, the same is hereby condoned and the appeal is admitted for adjudication.

3. Briefly the facts of the case are that the assessment in this case was originally completed under section 144 r.w.s 147 at an assessed income of Rs. 47,00,000/- on account of unexplained money. Thereafter, the assessee carried the matter in appeal before the Tribunal and the matter was remanded back to AO for fresh adjudication. Thereafter, the assessment order was passed

under section 147 r.w.s 254 r.w.s 144B again at an assessed income of Rs. 47,00,000/- on account of unexplained money.

4. During the course of assessment proceedings, statutory notices under section 142(1) were issued on five different occasions. As per the AO, there was no compliance on the part of the assessee and penalty proceeding under section 271(1)(b) were separately initiated by issuing notice under section 271(1)(b) dt. 30/03/2022. In response, the assessee submitted that since the quantum proceedings were pending before the Ld. CIT(A), the penalty proceedings may be kept abeyance however the AO proceeded and held that the assessee has not shown any reasonable cause which prevented him from making compliance to the statutory notices issued under section 271(1)(b) of the Act and he accordingly held that it is a fit case for imposition of penalty of Rs. 10,000/- per default under section 271(1)(b) for non compliance with the statutory notices issued under section 142(1) of the Act and accordingly, penalty of Rs 50,000/- was levied on the assessee under section 271(1)(b) of the Act.

5. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has since sustained the levy of penalty under section 271(1)(b) of the Act. Against the said findings, the assessee is in appeal before us.

6. During the course of hearing, the Ld. AR submitted that the assessee being an agriculturist and not well versed with the e-filing portal was initially not aware about the issuance of notice on 18/11/2021 and 05/03/2022. However in response to subsequent two notices dt. 10/03/2022 and 21/03/2022, the reply were duly filed on 12/03/2022. It was accordingly submitted that it is incorrect on the part of the AO to hold that the assessee has not complied with any of the notices so issued by him. It was further submitted that the assessment in this case was completed under section 147 r.w.s 254 r.w.s 144B of the Act which means that the subsequent compliance were considered as good compliance by the

AO and therefore there is no basis for levy of penalty. It was further submitted that the addition so made in the quantum proceedings have since been deleted by the Id CIT(A) and even on this account, the penalty so levied be deleted.

7. Without prejudice to the aforesaid submissions, it was submitted that the penalty under section 271(1)(b) cannot be imposed for each and every notice issued under section 142(1) as it is the same information which has been sought by the AO time and again, and thus, it is the same default and in this regard, reference was drawn to the decision of Coordinate Delhi Benches in case of Smt. Rekha Rani Vs. DCIT, Central Circle-8, New Delhi [2015] 60 taxmann.com 131 wherein the relevant findings read as under:

"5. We have considered the submissions of learned DR and have perused the order of the Assessing Officer and the learned CIT(A). we find that there was no reasonable cause on the part of the assessee for not appearing on the different dates of hearing before the Assessing Officer in response to notice issued under Section 143(2) of the Act. However, we find that the default is same and, therefore, penalty of Rs. 10,000/- could be imposed for the first default made by the assessee in this regard. The penalty under Section 271(l)(b) could not be imposed for each and every notice issued under Section 143(2), which remained not complied with on the part of the assessee. The provision of Section 271(l)(b) is of deterrent nature and not for earning revenue. Any other view taken shall lead to the imposition of penalty for any number of times (without limits) for the same default of not appearing in response to the notice issued under Section 143(2) of the Act. This does not seem to be the intention of the legislature in enacting the provisions of Section 271(l)(b) of the Act. In case of failure of the assessee to comply with the notice under Section 143(2) of the Act, the remedy with the Assessing Officer lies with framing of "best judgement assessment" under the provisions of Section 144 of the Act and not to impose penalty under Section 271(l)(b) of the Act again and again. In this view of the matter, we restrict the penalty levied under Section 271(l)(b) of the Act to the first default of the assessee in not complying with the notice under Section 143(2) of the Act. Accordingly, the penalty imposed is restricted to Rs. 10,000/- as against Rs. 50,000/- confirmed by the learned CIT(A). The grounds of appeal of the assessee are-thus partly allowed."

8. Further, reliance was placed on the decision of the Coordinate Jaipur Benches in case of Sandeep Verma Vs. ITO in ITA No. 1167/JP/2019 dt. 09/01/2020 wherein the relevant findings read as under:

"5. We have considered the written submissions of the assessee as well as the arguments of the Id. D/R and carefully perused the impugned orders of the authorities below. There is no dispute that the assessee has neither filed any return of income nor appeared before the AO in response to the notice under section 148 as well as notices issued under section 142(1) of the Act. The AO has initiated the proceedings under section 271(l)(b) for non compliance of notices issued under section 142(1) of the Act. The details of the notices issued under section 142(1) as reproduced by the AO in para 1 of the penalty order are as under:-

Notice u/s	Date of Issue	Date of hearing	Remarks
142(1)	29.06.2017	11.07.2017	Non-complied
142(1)	12.07.2017	19.07.2017	Non-complied
142(1)	25.07.2017	10.08.2017	Non-complied
142(1)	11.08.2017	22.08.2017	Non-complied

In the assessment order, the AO has stated that a notice under section 142(1) along with the query letter was issued on 29.06.2017. Since there was no compliance by the assessee to the said notice, therefore, again a notice under section 142(1) was issued on 12th July, 2017. Similarly, the AO again issued two more notices under section 142(1) on 25.07.2017 and 11.08.2017. All these notices under section 142(1) were issued by the AO seeking the same information from the assessee, therefore, once the assessee has committed a default of non-compliance of the information sought by the AO then issuing repeated notices by the AO seeking same information would not multiply the default. Therefore, even if the AO issued 4 notices under section 142(1) but the information sought in all these notices was the same, then it would constitute only one default. As regards the explanation of the assessee for explaining the cause of non-compliance, we find that except the last notice dated 11.08.2017, the earlier 3 notices issued by the AO under section 142(1) were issued prior to the date of alleged transfer on 03.08.2017. Therefore, the said explanation of the assessee is without any substance or merits. Hence, in the facts and circumstances of the case, we restrict the penalty levied under section 271(l)(b) of the Act to one default as against 4 defaults treated by the AO. Accordingly, the penalty under section 271(l)(b) of the IT. Act is confirmed to the extent of Rs. 10,000/-.

9. It was accordingly, submitted that where the Bench so decide that the penalty has to be levied, then the such penalty should be restricted to an amount of Rs. 10,000/- only.

10. Per contra, the Ld. DR has relied on the findings of the lower authorities. It was submitted that once the Tribunal has set aside the matter to the file of the AO and directed the assessee to attend to the assessment proceeding, the assessee ought to have complied with the notices issued by the AO which the assessee has failed to comply with. It was further submitted that merely the fact that the addition so made by the AO have subsequently been deleted by the Id

CIT(A), the same is no excuse for the assessee not to comply with the notices so issued by the AO during the assessment proceedings and there is a distinction between the penalty u/s 271(1)(C) and penalty u/s 271(1)(b) of the Act and on such basis, the penalty so levied u/s 271(1)(b) cannot be deleted. He accordingly supported the order and findings of the lower authorities.

11. I have heard the rival contentions and perused the material available on record. Admittedly, during the course of set-aside proceedings, the AO had issued notices u/s 142(1) on five different occasions and out of the same, the assessee admittedly didn't comply with the initial three notices, however, the latter two notices have been complied with as evident from the assessment order and therefore, the default is in terms of the non-compliance of the initial three notices. The explanation of the assessee in terms of non-compliance to these notices in terms of not conversant with the e-filing portal doesn't sound convincing, as rightly pointed out by the Id DR that where the assessee can file appeal before the Tribunal and has the necessary assistance from his Counsel, he cannot claim ignorance of the directions so given by the Tribunal by seeking further shelter/ignorance to access to the e-filing portal where the notices have been reflected and in any case, nothing has been brought on record in terms of non-receipt of the notices on the email id so provided by the assessee. Having said that, we find merit in the contention of the Id AR that where the notices have been issued by the AO, one after the another, on three different occasions seeking the same information, it will not multiply the default and it would constitute a single default and decisions cited by the Id AR support the case of the assessee. In light of the same, considering the facts and circumstances of the present case, I hereby restrict the penalty levied under section 271(l)(b) of the Act to one default as against five defaults treated by the AO. Accordingly, the penalty under section 271(l)(b) of the IT. Act is confirmed to the extent of Rs. 10,000/- and remaining penalty is hereby directed to be deleted.

12. In the result, the appeal of the assessee is partly allowed.

(Order pronounced in the open Court on 09/01/2025)

Sd/-
विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य / ACCOUNTANT MEMBER

AG

Date: 09/01/2025

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 आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar