

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

**BEFORE SHRI SUBHASH MALGURIA, JUDICIAL MEMBER
AND
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

I.T.A. No.188/Alld/2024
Assessment Year:2018-19

Nav Nirman 1095/1265, Old Katra, Allahabad PAN:AAGFN8077J (Appellant)	Vs.	Dy.C.I.T., Central Circle, Allahabad. (Respondent)
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Appellant by	None (Application)
Respondent by	Shri A. K. Singh, Sr. D.R.
Date of hearing	07/04/2025
Date of pronouncement	07/04/2025

ORDER

PER SUBHASH MALGURIA:J.M.

This appeal has been filed by the assessee for assessment year 2018-2019 against impugned appellate order dated 18/09/2024 (DIN & Order No.ITBA/APL/S/250/2024-25/1068758029(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short].

2. The facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of trading of plywood, adhesive, locks, kitchen appliances, hardware and cement. A survey proceeding under section 133A of the Act was carried out in the case of the assessee on 08/02/2018. The case of the assessee was selected for compulsory scrutiny and notice u/s 143(2) of the Act was issued on 20/09/2019. The assessment was completed u/s 144 of the Act on 23/04/2021 on an income of Rs.19,86,138/- against the returned income of Rs.1,64,420/-. Penalty proceedings under section 271A(1)(d) of the Act were initiated against the assessee. Notices u/s 142(1) dated 18/01/2021 and 01/02/2021 were issued but no compliance was made. Therefore, notice u/s 274 r.w.s. 272A(1)(d) of the Act dated 28/03/2021 was issued. Thereafter, notice u/s 274 r.w.s. 272A(1)(d) of the Act dated 10.09.2022 was issued to the assessee to show cause why an order imposing a penalty should not be made u/s 272A(1)(d) of the Act for non compliance of the notices u/s 142(1) of the Act. Vide letter dated 17.09.2021, the assessee submitted that in response to notice u/s 142(1) dated 18.01.2021 it had filed an adjournment application on 29.01.2021 and in response to notice u/s 142(1) dated 01.02.2021 it had filed an adjournment application 04.02.2021. However, in the penalty order passed u/s 272A(1)(b) of the Act, it has been mentioned that the adjournment applications, as stated by the assessee, were not available in the record. Thereafter, notice u/s 274 r.w.s. 272A(1)(d) of the Act dated 31/01/2022 was issued to the assessee through e-mail and also through Speed Post which was delivered to the assessee but no compliance was made. In view of the above, a penalty of Rs.20,000/- was made. Aggrieved with the penalty order, the assessee carried the matter in appeal before the learned CIT(A). The assessee's appeal against

the aforesaid penalty of Rs.20,000/- was dismissed by the learned CIT(A) vide order dated 18/09/2024. The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 18/09/2024 of learned CIT(A).

3. During the course of hearing before the Income Tax Appellate Tribunal, none was present on behalf of the assessee. Therefore, we proceeded to decide the issue after hearing learned D.R. and perusing the material available on record. In this case the Assessing Officer has completed the assessment ex-parte. While confirming the penalty, the learned CIT(A) has observed as under:

“5.4 I have considered the facts of the case submitted by the appellant and I am of the opinion that the compliance date 29.01.2021 and 08.02.2021 could have been complied by the appellant. During the appellate proceeding, the appellant failed to furnish any evidence in support of his contention that the adjournments were sought during assessment proceeding. The contention of the appellant with regard to the second wave of Covid-19 pandemic has been considered, however, the covid wave started from March, 2021 and lasted upto May, 2021 whereas the compliance dates of aforementioned notices u/s 142(1) of the Act fall in the month of January & February, 2021. Therefore, I am of the considered view that the penalty of Rs. 20.000/- levied by the Assessing Officer for non-compliance of the notices issued u/s 142(1) of the Act dated 18.01.2021 and 01.02.2021 deserves to be confirmed. Thus, penalty of Rs. 20.000/- for non-compliance of notices dated 18.01.2021 and 01.02.2021 is hereby confirmed.”

3.1 It is clear from the findings of learned CIT(A) that he failed to pass a speaking order on merits and dismissed the assessee's appeal in a summary manner. Learned CIT(A) is duty bound u/s 250(6) of the IT Act to pass a speaking order on grounds of appeal raised by the assessee before him, on

merits, but learned CIT(A) failed to do so. Though learned CIT(A) had afforded various opportunities to the assessee to present its case but the assessee failed to avail the same. However, we are of the view that one more opportunity should be given to the assessee. In view of the foregoing, the impugned order of learned CIT(A) is set aside and the issue in dispute regarding levy of penalty is restored back to the file of learned CIT(A) with the direction to pass fresh order in accordance with law after providing reasonable opportunity to the assessee.

4. In the result, the appeal of the assessee stands allowed for statistical purposes.

(Orders pronounced on 07/04/2025 in accordance with Rule 34(4) of the I.T.A.T. Rules)

Sd/.
(SANJAY AWASTHI)
Accountant Member

Sd/.
(SUBHASH MALGURIA)
Judicial Member

Dated:07/04/2025

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Concerned CIT
4. The CIT(A)
5. D.R. ITAT, Lucknow

Asstt. Registrar