

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER

ITA No.463/Ind/2024 (AY: 2017-18)

Ravindra Patidar, 112/2 Dharamath, Runji, Gutampura, Indore (PAN: BEGPP5495H)	<u>बनाम/</u> Vs.	NFAC, Delhi
(Appellant)		(Respondent)
Assessee by	Shri Pranay Goyal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	14.05.2025	
Date of Pronouncement	16.05.2025	

आदेश / O R D E R

Per Paresh M Joshi, J.M.:

The assessee has filed the present appeal Under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the “Act” for sake of **brevity**) before this Tribunal as and by way of Second appeal under the Act. The assessee is aggrieved by the order bearing Number ITBA/NFAC/S/250/2023-24/1057550133(1) dated 31.10.2023 of Ld. CIT(A) passed u/s 250 of the Act which is hereinafter referred to as the “**Impugned order**”. The relevant Assessment Year is 2017-18 and the

corresponding previous year period is from 01.04.2016 to 31.03.2017.

2.

FACTUAL MATRIX

2A. Registry has pointed out that there is a delay of 145 days in preferring the present appeal. **“Impugned order”** is dated 31.10.2023. In Form No.36 date of service of order is 31.10.2023. The instant appeal was e-filed on 23.05.2024. Condonation of delay application states that the assessee is an agriculturist and illiterate person. The assessee is not well conversant with the latest technological advancements and was unable to receive the **“impugned order”** electronically. Upon consultation with present AR the assessee came to know of passing of **“impugned order”** on or about 15.05.2024. An affidavit in support of **COD** is placed on record. We have perused the COD application along with affidavit in support. Upon hearing both Ld. AR and Ld. DR we are of the considered view that the assessee has shown sufficient cause which is bonafide. We accordingly condone the delay. Appeal admitted and taken up for hearing.

2.1 That as and by way of an order u/s 272A(1)(d) of the Act a penalty of Rs.40,000/- for each non compliance to the notice(s) u/s 142(1) issued on 29.05.2019, 03.07.2019, 26.08.2019 and 24.10.2019 was imposed on the assessee vide order bearing No. ITBA/PNL/F/272A(1)(d)2021-22/1039339502(1) dated 03.02.2022 which is hereinafter referred to as the **“impugned penalty order”**.

2.2 That the assessee's quantum assessment was completed u/s 144 of the Act on 09.12.2019 wherein addition of Rs.10,70,000/- u/s 69A of the Act was made. The said **“quantum assessment order”** dated 09.12.2019 stands set aside by CIT(A) order bearing No.ITBA/NFAC/S/250/2024-25/1073777458(1) dated 27.02.2025 wherein the assessment order dated 09.12.2019 is set aside to the file of Ld. A.O for framing fresh assessment.

2.3 That the assessee being aggrieved by the **“impugned penalty order”** prefers first appeal u/s 246A of the Act before Ld.

CIT(A) who by the **"impugned order"** has dismissed the first appeal of the assessee on reasons and grounds specified therein.

2.4 That the assessee being aggrieved by the "impugned order" has filed the instant appeal before this Tribunal and has raised following grounds of appeal against the "impugned order" which are as under:-

"1. That, the Ld. CIT-A erred to sustain the penalty levied by the Ld. AO of Rs. 40,000/- U/s 272A(1)(d) of the Act, ignoring the fact that the appellant had reasonable cause for not replying to the notices issued U/s 142(1) of the Act. Therefore, the penalty levied is liable to be deleted under the provisions of section 273B of the Act.

2. That, without prejudice to the above levying penalty of Rs. 10,000/- per notice issued U/s 142(1) of the Act is highly excessive and unreasonable.

3. That, the appellant craves leave to add alter any of the grounds of appeal on or before the date of hearing".

3. **Record of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 14.05.2025 when the Ld. AR for and on behalf of assessee appeared before us and interalia contended that as and by way of an quantum assessment order bearing No.ITBA/AST/S/144/2019-20/1021946050(1) dated 09.12.2019 passed u/s 144 of the Act assessee's total assessed income was computed at

Rs.10,70,000/-). However **“quantum assessment order”** stand set aside by 1st appellate order of CIT(A) dated 27.02.2025 (supra). That in view of this factual position the **“impugned order”** which is on penalty too fails. It was clarified to us that though quantum assessment proceedings and the penalty proceedings are two separate proceedings but the core issue herein is one of non compliances of notice(s) u/s 142(1) of the Act for which the assessee being a **farmer** and a non technical person in rural area has shown a cause of being unaware of any tax proceeding procedures **which “perse”** is required to be **believed in**. The Ld. AR prayed for setting aside of the “impugned order”. The Ld. DR for and on behalf of the revenue interalia submitted before us that while it is true that quantum assessment proceedings and penalty proceedings are separate and independent of each other, the impact of quantum should not affect penalty order. Further in the instant case these are violations of Section 142(1) notices(s) on more than four occasions **which perse is violation in itself**. If each and every assessee takes a plea of being not aware of tax proceedings procedures, then the Section 142(1) and its compliances and violations **too** would become meaningless and

redundant. Further fiscal stature must be construed strictly and there is no room of any bonafide or good intentions. The Ld. DR finally prayed that **“impugned order”** should be upheld.

4. **Observations, findings & conclusions.**

4.1 We now have to adjudge and adjudicate the present appeal filed by the revenue on basis of the records of the case and contentions canvassed before us during the course of hearing. In brief we have to decide the legality, validity and the propriety of the **“impugned order”**.

4.2 We have carefully perused the records of the case as presented to this tribunal by both Ld. AR and Ld. DR to determine the legality, validity of the **“Impugned Order”** basis law and by following due process of law.

4.3 We basis records of the case and after hearing and upon examining the contentions of both Ld. AR and Ld. DR are of the considered view that in all total four notice(s) were issued to the assessee u/s 142(1) of the Act for compliance but none were complied with. **We notice that u/s 272A(1)(d) if any person fails to comply with a notice under Sub Section (1) of Section**

142 he shall pay, by way of penalty, a sum of Ten Thousand Rupees for each such default or failure. We notice and observe that admittedly there is a failure and default on four occasions of preceding quantum assessment order (supra). **We taking into consideration entire gamut of the case and the peculiar facts and circumstances of the case including the fact that assessee is an agriculturist and is not technically well versed with procedural** aspect of tax matters, residing in rural area of India are of the considered opinion that since the matter on quantum assessment is relegated back to Ld. A.O by Ld. CIT(A) (supra), we feel that now at least the assessee would **purge the violations** which he had done on earlier occasions as quantum assessment proceedings would re-commence afresh on *denovo basis*. We therefore are of the considered opinion that by virtue of power conferred upon us in view of Section 254/273B of the Act wherein this Tribunal is empowered to pass orders **as it think fit** we deem it fit proper and appropriate that in order to meet ends of justice that the **"impugned order"** should be set aside. Accordingly we set aside the **"impugned order"** with **admonition** to the assessee that in future he should not repeat

such glaring mistake which in law are mandatory for one and all. We make it clear that this order should not be treated as binding precedent so as to give licence to the other assessee's to flout the Section 142(1) actions of department, as that would not be against the interest of tax administration.

5. **Order**

5.1 In the premises impugned order is set aside and penalty imposed are deleted.

5.2 In result appeal of the assessee is allowed.

Order pronounced in open court on 16.05.2025.

Sd/-

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक/ Dated : 16/05/2025

Dev/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore