



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, AM.

&

DINESH MOHAN SINHA, JM

आयकरअपीलसं./ITA No.876/RJT/2024

निर्धारणवर्ष / Assessment Year: (2018-19)

(Hybrid Hearing)

Pooja Omprakash Nawani Flat-5 Nirav Appartment, Plot-358 Ward-2B, Adipur 370205	Vs.	The Income-tax Officer, ITO Ward – 2, Gandhidham - 370205
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACFPN4546H		
(Appellant)		(Respondent)

Appellant by : Shri Chetan Agarwal, Ld. AR
Respondent by : Shri K. L. Solanki, Ld. SR. DR
Date of Hearing : 24 / 04 /2025
Date of Pronouncement : 08 / 07 /2025

आदेश / ORDER

PER DINESH MOHAN SINHA JM;

Captioned appeal filed by assessee pertaining to Assessment Year 2018-19 penalty, is directed against order passed by Commissioner of Income Tax (Appeal), vide order dated 17/10/2024, which in turn arises out of an order passed by the Assessing Officer dated 16/03/2023 u/s 147 r.w.s. 144 read with section 144B of the Income Tax Act, 1961.



2. GROUNDS OF APPEALS:-

Learned CIT(A) erred in law as well as on facts in upholding the penalty of Rs.20,000/- u/s. 272(1)(d) of the Act.

3. Facts of the Case

The ITO, Ward-2, G'Dham with prior approval of the Pr.CIT, Rajkot-1, passed order u/s 148A(d) of the Income tax Act, 1961 (hereinafter referred to as 'the Act') on 29.03.2022, holding the aforementioned receipt as income chargeable to tax having escaped assessment for AY 2018-19. Accordingly, notice u/s 148 of the Act was issued on 29.03.2022. The case was assigned to the assessment unit and thereafter intimation to assessee for completion of assessment in accordance with procedure of section 144B of the Act was issued on 17.08.2022. The assessee remained non responsive throughout the entire assessment proceedings. During the course of assessment proceedings, notices u/s 142(1) of the Act were issued to the assessee on 19/10/2022 and 23/11/2022; however, the assessee failed to comply with the requirement of the statutory notices. The assessment order was passed u/s 147 r.w.s 144 r.w.s 144B of the Act on 16.03.2023 on assessed income of Rs. 1,19,10,999/-. However, penalty proceedings u/s 272A(1)(d) were initiated separately by issue of notice u/s 274 r.w.s 272A(1) (d) of the Act dated 15.03.2023 for non-compliance of aforementioned notices u/s 142(1) of the Act. "The assessee's husband and son were both in depression due to loss in business and study related issue, required extensive medical treatment during the relevant period, and the assessee was unable to focus on taxation matters. Additionally, the assessee's husband's business suffered significant losses during the COVID-19 pandemic, which further added to their financial difficulties. Assessee had handed over all details and documents pertaining to her source of purchase of immovable property and sale of motor vehicle to her AR for making timely compliance. However, AR of the appellant has neither made any compliance nor informed the appellant about non-compliance in her case, in spite of being forwarded with all of the notices issued in course of assessment



by the appellant to AR. the assessee was not aware of the legal requirements and timelines to file the return. However, we are not pleading ignorance as an excuse but have now engaged as competent professional to represent the assessee in this matter. The assessee was totally unaware about noncompliance at the time of assessment by her AR and also not knowing that why the AR has not complied with the notices in spite of being forwarded with all the notices and details in course of assessment for the reason best known to him only. Your honour may please appreciate that it seems clearly from the facts as above that non-compliance was not willful on the part of the appellant and hence there was not any deliberate violence under the Income Tax Act by non-compliance on appellant's part and hence request to drop the penalty proceedings-initiated u/s. 272A(1)(d) of the Act. We hereby also want to draw your honour's kind attention to the decision of Hon'ble Apex Court rendered by a larger Bench comprising of three of their Lordships in the case of Hindustan Steel vs. State of Orissa in 83 ITR 26 held that that "An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. 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 a consideration of all the 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 Bonafide belief that the offender is not liable to act in the manner prescribed by the statute. In view of above, we request your honour to please drop the penalty proceedings u/s. 272A(1)(d) of the Act." The penalty leviable as per the provisions of section 272A(1)(d) of the Act is Rs.10,000/- for each default or failure. In view of the same, the penalty is levied at Rs.20,000/- (Rupees. Twenty thousand/- only) (10000 x 2) in respect of the aforementioned default of non-compliance to notices u/s 142(1) of the Act for AY 2018-19."



4. That the assessee filed an appeal against the order of assessment before Ld. CIT(A) dated on 11/12/23

That the Ld. CIT(A) has issued three notices of hearing dated 04-04-2024, 15-04-2024 and 20-04-2024 and finally notices on 15-10-2024. But there were non-compliance of notice. The Ld. CIT(A) has disposed of appeal by under mention remark:

“the appellant was given several opportunities for filing of written submissions and for filing the condonation petition. The appellant filed neither of them. Under the circumstances that no petition for condonation was filed, the delay in filing of the appeal cannot be condoned, since no cause was put forth by the appellant for such delay, much less a sufficient cause. The appeal is not admitted.

In effect the appeal is dismissed.”

5. That the assessee field an appeal against the impugned order dated 17.10.2024 before this Tribunal.

i. The Ld. A.R. of the assessee has submitted that the A.O. has levied penalty for non-compliance of the notice, that main reason for non-compliance of notice that, that the husband and the son both are not medically fit and the required extensive medical treatment & care. No physical notice has been received by the assessee. The assessee was having no knowledge about the hearing.

ii. On the contrary the Ld. D.R. submitted that the assessee is non-cooperative in there was non-compliance of notice received by Ld. CIT(A) and also non-compliance of notice of the Ld. A.O.

6. We have heard the rival submissions and perused the material available on record including order of the Ld. CIT(A). We note that the three notices were issued by the Ld. CIT(A) dated 04-04-2024, 15-04-2024 and 24-04-



2024 and there was non-compliance by the assessee however on 08-08-2024 the appellant has filed an application for adjournment for one-month in ITBA Portal. Final notice of hearing. was issued on 27-09-2024 to be complained by 15-10-2024. But there was no response to the notice by the assessee however the Ld. CIT(A) has given several opportunities for submission and explained the case. Hence appeal is not admitted and in effect the appeal is dismissed. We note that delay in filing the appeal before Ld. CIT(A) and there is no application for condonation of delay. Hence the limitation in filing the appeal as prescribed under section 249 is not comply with by the assessee. However Ld. CIT(A) has issued notice u/s. 250 of the Act meaning thereby the limitation in section 249 has not been considered. There is contradictions in between two Fact in case the notice of hearing u/s. 250 of the act issued meaning thereby the appeal has been admitted for hearing. We further note that the Ld. CIT(A) has not disposed of the appeal on merit u/s. 250 of the Act. In view of the above fact and circumstances of the case, we note that at one place notice for hearing issued by Ld. CIT(A) means the appeal admitted and other place the appeal has not been admitted because of delay in filing the appeal.

The Hon'ble Gujarat High Court in case of **Hytasun Magnetics Ltd Vs. JCIT 258 Taxman 264 (Guj.)** observed object that discretion for condonation of delay is wide enough even the discretion can be exercise without former application of conditional of delay application. In view of the above and in the interest of justice and fair play, we condone the delay in filing of the appeal before Ld. CIT(A) and restore the matter back before the Ld. CIT(A) and further direct to the Ld. CIT(A) to decide the appeal on merits after giving due opportunity to the assessee.



7. In view of the fact and circumstance of the case. We hold that the Ld. CIT has not disposed of the appeal on merit and has decided only of the basis of delay in filing the appeal. In the interest of due justice. We hereby Condon the delay by 21 days and remit the matter back to the file of the Ld. CIT for deciding the appeal on merit. We further direct to assessee to file relevant document and comply with the terms of notice issued by the CIT(A) for hearing of the case.

8. In result the appeal of the assessee allowed for statical purpose.

Order pronounced in the open court on 08 / 07 /2025.

Sd/-

**(Dr. A.L. SAINI)
ACCOUNT MEMBER**

Sd/-

**(DINESH MOHAN SINHA)
JUDICAL MEMBER**

Rajkot

दिनांक/ Date: 08 / 07/ 2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot