

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VP &  
MS PADMAVATHY S, AM**

**I.T.A. No. 5759/Mum/2025  
(Assessment Year: 2016-17)**

<b>Ajaydas Ukey,</b> Flat No. 702, Planet Venus CHS, Plot 13, Sector-24, Kamothe, Navi Mumbai-410206. <b>PAN: AAVPU4018P</b>	Vs.	<b>ITO-1(1)(1),</b> <b>[Through National Faceless</b> <b>Assessment Centre, Delhi),</b> Aayakar Bhavan, M.K. Road, Mumbai-400020. .
<b>Assessee)</b>	:	<b>Revenue)</b>

**Assessee by** : Shri Yash Jain (Virtually appear)  
**Revenue by** : Shri Surendra Mohan, Sr. DR  
**Date of Hearing** : 18.11.2025  
**Date of Pronouncement** : 02.12.2025

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) dated 05.07.2025 for Assessment Years (AY) 2016-17. The issued contended by the assessee through the grounds of appeal pertain to levy of penalty u/s 271(1)(b) of the Act.

2. The assessee is an individual and did not file the return of income for AY 2016-17. The Assessing Officer (AO) received an information that the assessee has purchased immovable property for a consideration of Rs. 55,00,000/- and salary income deposited in the bank account is Rs. 13,74,152/- during the year under consideration. The AO issued a notice u/s. 148 on 20.03.2023 in response to which the assessee filed the return of income on 13.06.2023 declaring total income of Rs. 9,52,090/-. Since the assessee did not respond to the statutory notices issued by the AO, the AO treated the amount of the property purchased as unexplained investment and added to the income of the assessee accordingly. The AO also added the difference between the salary income as per Form 26AS and the income declared by the assessee in response to notice u/s. 148 as the salary income of the assessee. The AO also initiated penalty u/s. 271(1)(b) for non-compliance of various notices issued by the AO. The AO passed an order u/s. 271(1)(b) levying a penalty of Rs. 20,000/- towards failure to response to the notice u/s. 142(1) dated 11.08.2022 and 13.10.2023. Aggrieved the assessee filed further appeal before the CIT(A). Before the CIT(A) the assessee submitted that he was out of India during the period when the notices were issued to the assessee. The assessee further submitted that the notice of hearing was sent to the email Id of the Tax Consultant who did not inform the assessee. The CIT(A) however did not accept the submissions of the assessee stating that the copy of the notices were also sent to the personal email Id. of the assessee and that the notices pertaining to the penalty proceeding which were sent to the email Id. of the Tax Consultant were responded by the assessee. The CIT(A) held that there is no reasonable cause for the assessee not to respond to the notices issued by the AO and accordingly confirmed the penalty u/s. 271(1)(b) of the Act.

3. The ld. AR reiterated the submissions made before the CIT(A) and prayed that there is a reasonable cause for the assessee not to have responded to the notices. The ld. AR alternatively submitted that the penalty u/s. 271(1)(b) cannot be imposed for each and every notice issued and at best the levy can be restricted only to the first default. The ld. AR in this regard relied on the decision of the Delhi Bench of the Tribunal in the case of Rekha Rani vs. ACIT [2015] 60 taxmann.com 131.

4. The ld. DR on the other hand argued that the notices were sent to the personal email Id. of the assessee also which could be accessed from anywhere globally and therefore the plea of the assessee that he not being in India as a reason for not responding cannot be accepted.

5. We heard the parties and perused the material on record. During the course of hearing, it was queried about the status of the quantum appeal and the ld. AR submitted that the same is pending before the CIT(A). From the perusal of records, it is not coming out clearly whether the assessment u/s.147 was completed u/s.144. Further it is also not clear as to whether the assessee failed to respond to all the notices issued by the assessee or the AO issued only two notices since the penalty is levied u/s.271(1)(b) for failure to respond to notices issued on 11.08.2023 and 13.10.2023. It is relevant to mention here that when the AO has not completed the assessment u/s.144 no penalty u/s.271(1)(b) can be levied as has held in various judicial precedence. Accordingly we are remitting the appeal back to the CIT(A) to be decided along with the quantum appeal where the fact pertaining to whether the assessee has responded to all the AO's notices or not and whether the AO's order is passed u/s.144 would be examined. Needless to say that the assessee be given a reasonable opportunity of being heard. It is ordered accordingly.

6. In result, the appeal of the assessee is allowed for statistical purposes.

*Order pronounced in the open court on 02-12-2025.*

***Sd/-***  
**(SAKTIJIT DEY)**  
**Vice-President**

*\*SK, Sr. PS*

***Sd/-***  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**