

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3102/Mds/2014

निर्धारण वर्ष / Assessment Year : 2007-08

Smt. Asha Thayer,
C/o S. Venkatram & Co.,
218, T.T.K. Road, Alwarpet,
Chennai - 600 018.

v. The Assistant Director of Income-
tax (International Taxation),
Chennai - 600 034.

PAN : ADGPA 8322 C

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri G. Seetharaman, CA

प्रत्यर्थी की ओर से/Respondent by : Shri S. Das Gupta, JCIT

सुनवाई की तारीख/Date of Hearing : 06.04.2015

घोषणा की तारीख/Date of Pronouncement : 08.04.2015

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-VII, Chennai, dated 10.09.2014, confirming the penalty levied under Section 271(1)(b) of the Income-tax Act, 1961 (in short 'the Act').

2. Shri G. Seetharaman, the Ld. representative of the assessee submitted that the assessee is a non-resident. According to Ld.

representative, there was no person in India to handle the matter. The Ld. representative further submitted that the notice issued by the Assessing Officer under Section 142(1) of the Act appears to have been served on the employee of the power of attorney. However, the same was not brought to the notice of either the power of attorney of the assessee or the assessee herself. Therefore, the assessee could not respond to the notice issued by the Assessing Officer under Section 142(1) of the Act. Therefore, according to Ld. representative, there was reasonable cause for not responding to the notice under Section 142(1) of the Act.

3. On the contrary, Shri Das Gupta, the Ld. Departmental Representative submitted that the notice issued under Section 142(1) of the Act was not complied by the assessee. Therefore, penalty was levied under Section 271(1)(b) of the Act. Since there was no reasonable cause on the part of the assessee for not responding to the notice, according to Ld. D.R., the CIT(Appeals) has rightly confirmed the penalty levied by the Assessing Officer.

4. We have considered the rival submissions on either side and perused the relevant material on record. The assessee's claim is that she is a non-resident Indian and the notice was served on the employee of the power of attorney. The Department could not

controvert this contention of the assessee. The notice ought to have been served either on the assessee or on the power of attorney agent. In the absence of service of notice either on the power of attorney agent or on the assessee herself, this Tribunal is of considered opinion that failure of the assessee to comply with the notice under Section 142(1) of the Act cannot result in levy of penalty. In other words, there was reasonable cause on the part of the assessee for non-compliance of notice issued under Section 142(1) of the Act. Therefore, this Tribunal is of considered opinion that this is not a fit case for levy of penalty. Accordingly, the order of the lower authority is set aside and the penalty of ₹10,000/- levied by the Assessing Officer and confirmed by the CIT(Appeals) is deleted.

5. In the result, the appeal of the assessee stands allowed.

Order pronounced on 8th of April, 2015 at Chennai.

sd/-
(A.Mohan Alankamony)
(ए. मोहन अलंकामणी)
लेखा सदस्य/Accountant Member

sd/-
(N.R.S. Ganesan)
(एन.आर.एस. गणेशन)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 8th April, 2015.
Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-VII, Chennai-34
4. आयकर आयुक्त/CIT(International Taxation), Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.