

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
DR. B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA No.1376/Del/2023
[Assessment Year : 2017-18]**

Maqsood Ali, S/o-Hakeemudadeen,H.No.1358, Naya Asiyana Colony, Meerut, Uttar Pradesh-250002. PAN-BTAPA3800J	vs	ITO, Ward-1(1)(4), Meerut.
APPELLANT		RESPONDENT
Appellant by	Shri Devashish Bhaduria, Adv. & Shri Shamsheer Singh, Adv.	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	15.06.2023	
Date of Pronouncement	21.06.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2017-18 is directed against the order of Ld. CIT(A), National faceless Appeal Centre (“NFAC”), Delhi dated 01.03.2023.

2. The assessee has raised following grounds of appeal:-

1. *“Under the facts and circumstances of the case, Ld. CIT (Appeal) has erred in sustaining the penalty imposed by the A.O. u/s 272A(1)(d) of the IT Act, 1961 vide his order u/s 250 dt. 01.03.2023, which is unjust and unwarranted.*
2. *Under the facts and circumstances of the case, Ld. CIT (A) has erred in not considering the written submission regarding reasonable cause filed by the Appellant on 24.02.2023 in a right perspective.*
3. *Under the facts and circumstances of the case, Ld. CIT (A) did not consider the facts that being an illiterate person, the appellant did not respond the statutory notices as he was not aware about Government*

ITD Portal being first year of online interface and has a reasonable cause for not attending the assessment proceedings before Ld. A.O.

4. *Under the facts and circumstances of the case, Ld. CIT (A) has erred in not establish the facts on records that statutory notices u/s 142(1) were got served properly upon the assessee during the course of assessment proceedings.*

The assessee can add, delete or modify any grounds of appeal during the time of proceedings.”

3. The effective ground in this appeal is against the sustaining of penalty imposed u/s 272A(1)(d) of the Income Tax Act, 1961 (“the Act”).

4. Facts giving rise to the present appeal are that the assessee filed its return of income on 28.08.2017 declaring income of Rs.2,40,000/- under the head “income from salaries”. The case was selected for scrutiny under CASS and a notice u/s 143(2) of the Act was issued through ITBA Portal but there was no compliance by the assessee. Thereafter, the Assessing Officer (“AO”) issued notices on 09.10.2018, 20.10.2019, 20.11.2019 and 28.11.2019 but there was no compliance by the assessee. The AO initiated penalty u/s 272A(1)(d) of the Act for failure to comply with notices and the impugned penalty of Rs.50,000/- was imposed vide order dated 01.12.2021.

5. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, sustained the addition and dismissed the appeal of the assessee.

6. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

7. Ld. Counsel for the assessee vehemently argued that the authorities below failed to appreciate that the assessee is an illiterate person and the notices were issued through e-mode on Govt. ITBA Portal. Therefore, he could not attend the proceedings before the assessing authority. The non-compliance of the notice was not deliberate but there was bonafide reason for not responding to the notices issued by the assessing authority. He further submitted that under the identical set of facts, the Co-ordinate Bench of the Tribunal in the case of **Triumph International Finance India Ltd. vs DCIT in ITA No.1870/Mum/2020** for **Assessment Year 2017-18** dated **10.03.2022**, deleted the penalty imposed on the assessee. He submitted that the facts are identical. The assessee should not be punished for his ignorance of technology. Therefore, a lenient and liberal view may be adopted in this case. He therefore, prayed that the impugned penalty may be deleted.

8. On the other hand, Ld. Sr. DR opposed the submissions and supported the orders of the authorities below.

9. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. We find that before Ld.CIT(A), it was stated that the assessee is an illiterate person and ignorant about the use of technology. He could not see the notices sent by the Revenue. It was further stated that the notices were sent at the address of the income tax return preparer who did not inform the assessee about the issuance of such notices sent by the Department. We find that Ld.CIT(A) has decided the issue by observing as under:-

“During the course of appellate proceedings also, the appellant has not submitted any evidence or filed any cogent reasons for not complying with the notices issued u/s 142(1) of the I.T. Act. Within the meaning of section 273B of the I.T. Act. The levy of penalty is subject to section 273B which provides that no penalty shall be imposable if the assessee proves that there was a reasonable cause for the said failure. However, in this case no such reasonable/sufficient cause has been put forth by the appellant. Hence, the action of the AO imposing penalty of Rs. 50,000/- is upheld and the appellant's appeal is accordingly dismissed.”

10. As per section 273B of the Act, no penalty under sub-section (1) & (2) under the provision of section 272A of the Act shall be imposable on the assessee for any failure refer to in the said provision if he proves that there was reasonable cause of the said failure. In the present case, the assessee demonstrated that there was a reasonable cause. **Firstly**, on account of the fact that notices were sent on the email-id of the income tax return preparer but he did not inform the assessee and **Secondly**, the assessee himself is not technologically literate. Moreover, the return of income prepared by such income tax return preparer disclosed the income at wrong head. The assessee is having small business and is not a salaried employee. The foundation regarding presumption that the assessee is a literate person, is based upon that the assessee being a salaried person cannot be an illiterate person. It is infact an incorrect fact. Therefore, looking to the facts of the present case, we are of the view that there was a reasonable cause for non-compliance of the statutory notices sent by the Department to the assessee. The Co-ordinate Bench of the Tribunal in the case of Triumph International Finance India Ltd. vs DCIT (supra) has held as under:-

5. *“The first appellate authority has rejected the explanation furnished by the assessee for non-compliance of the notice issued under section 142(1) of the Act merely for the reason that during penalty proceedings under section 272A(1)(d) of the Act, the assessee has not stated the reasonable cause. We are not in agreement with the findings of CIT(A). The assessee has explained that about ongoing assessment proceedings the assessee came to know only on receipt of order u/s. 272A(1)(d) of the Act and demand notice. The explanation furnished by the assessee before the CIT(A) and before the Tribunal is consistent. We are satisfied that non- appearance of the assessee in response to the initial notice under section 142(1) of the Act was not deliberate. The year 2019 being the initial year of shift towards digital and electronic mode, the mistake appears to be bonafide. The assessee has been able to show reasonable cause for the failure to comply with statutory notice u/s. 142(1) of the Act. Thus, in our view penalty levied u/s. 272A(1)(d) of the Act is unsustainable. The Assessing Officer is directed to delete the penalty.”*

11. Facts are identical and similar in the present case as decided by the Co-ordinate Bench of the Tribunal in the case of Triumph International Finance India Ltd. vs DCIT (supra). Therefore, respectfully following the decision of the Co-ordinate Bench of the Tribunal, we direct the AO to delete the impugned penalty. Grounds of appeal raised by the assessee are allowed.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 21st June, 2023.

Sd/-

(DR.B.R.R.KUMAR)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI