

IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH 'SMC-3' : AGRA
(Through Video Conferencing)

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER

(Through Virtual Hearing)

ITA No. 141/AGR/2018
Assessment Year : 2011-12

SH. AKSHAT DONERIA,
STAR COURT 8/1902, JAYPEE
GREENS, GOLF COURSE,
SURAJPUR KASNA ROAD,
GREATER NOIDA
(PAN: AGHPD8686Q)

(Appellant)

Vs. ITO, WARD 4(1),
INCOME TAX DEPARTMENT, AGRA

(Respondent)

Appellant by : Shri P.K. Sahgel, Advocate

Respondent by : Shri Shailendra Srivastava, Sr. DR.

Date of hearing : **20.07.2023**

Date of pronouncement : **25.07.2023**

ORDER

PER SHAMIM YAHYA, AM :

This appeal by the assessee for the assessment year 2011-12 is directed against the order dated 29.12.2017 of Learned CIT(A)-2, Agra.

2. The solitary issue raised by the assessee in the Appeal is relating to sustaining the penalty of Rs. 10,000/- u/s. 271(1)(b) of the Act.

3. The brief facts of the case are that during the assessment proceedings on the notices issued under section 142(1) of the Act by the Assessing Officer, no compliance was made by the assessee and due to non-cooperation and willful default by the assessee, AO imposed the penalty under section 271(1)(b) of the Act vide order dated 07.04.2014. Aggrieved with the aforesaid penalty order, the assessee appealed before the Ld. CIT(A)-2, Agra, who vide his impugned exparte order dated 29.12.2017 has sustained the penalty in dispute. Against the order of the Ld. CIT(A)-2, Agra, now the assessee is in appeal before the Tribunal.

4. At the time of hearing, Ld. AR for the assessee submitted that the assessee filed the return with the ITO, Ward 4(1), Agra and at that time the assessee was residing at "Flat No. B-5, Kripa Dham Complex, Fatehabad Road, Tajganj, Agra and the notice u/s. 143(3) of the Act dated 25.9.2012 was issued and served on that address and on the date fixed for compliance, the AR of the assessee appeared and the case was then adjourned *sine die*. It was further submitted that in between the assessee alongwith his family permanently shifted to NOIDA at Star Court 8/1902, Jaypee Greens, Gold Course, Surajpur Kasna Road, Greater Noida, Uttar Pradesh-201306, which intimation was given to the Income Tax Department, which is evident from the letter issued by the Income Tax

PAN Services Unit, Pune bearing reference No. F.No. DIT(E).PAN/ITMN_REG, PKGID:PCI/0016/18-04-2013/FFL, KNP/80/8810302090760801111/90223254, a copy of which is placed on record and also the assessee sent a letter on 17.3.2013 informing the change of his address. It is further submitted that despite such change of address notified to the Income Tax Department, the AO continued to send the notices on the old address of the assessee and thus these were never received by him and accordingly he could not make compliance to such notice for bonafide reasons and hence, the assessee was denied proper opportunity to defend his case properly and judiciously, for none of his fault. He further submitted that in accordance with sub section (1) of section 274 no order imposing a penalty under chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard. It was further submitted that it is evident from the order u/s. 271(1)(b) of the Act dated 7.3.2014 that the AO had sent the show cause notice u/s. 271(1)(b) of the Act dated 20.12.2013 for the alleged non compliance of notice u/s. 142(1) of the Act dated 17.10.2013 fixing the date of compliance on 29.10.2013 not on the correct address i.e. Star Court 8/1902, Jaypee Greens, Gold Course, Surajpur Kasna Road, Greater Noida, Uttar Pradesh-201306, which was available address mentioned in the PAN data base of the assessee and thus the same was not received by the assessee and therefore, he could not make the compliance of the same, hence, the assessee was prevented

by sufficient cause, which resulted into alleged failure, if any, in view of the provisions of section 273B read with section 271(1)(b) of the Act. Thus, he requested to delete the penalty of Rs. 10,000/- in dispute. In support of his contention, he relied upon the order of the Delhi Tribunal in the case of Balram Kumar Mahendra vs. ITO passed in ITA No. 1366 & 1367/Del/2010 (AY 2005-06) dated 31.5.2010.

5. On the contrary, Ld. DR relied upon the orders of the authorities below and submitted that the imposition of penalty by the AO for non-compliance to notices issued under section 142(1) of the Act was rightly confirmed by the Id. CIT(A), which does not need any interference, hence, the same may be upheld.

6. We have gone through the rival contentions and perused the records. We find that penalty in this case has been levied under section 271(1)(b) of the Act on account of non-appearance of the assessee before the AO which was occurred by non-receipt of the notice, due to change of address, which the assessee has intimated to the Income Tax Department, evidence of which are placed on record. This section mandates levy of penalty for, *inter alia*, not complying with the notice issued under section 142(1). Section 273 B of the Income Tax Act provides that, *inter alia*, penalty under section 271(1)(b) need not be imposed, if it is proved that there was a reasonable cause for the said failure of the assessee to comply with the provisions of section 271(1)(b). In this case

we find that non-appearance of the assessee before the AO was caused by non-receipt of the notice. This in our considered opinion can be construed as reasonable cause under section 273B for non-compliance by the assessee. Under such circumstances, rigors of penalty under section 271(1)(b) are not attracted in the case of the assessee, therefore, we delete the penalty of Rs. 10,000/- imposed by the AO and sustained by the Ld. CIT(A). Our view is fully supported by the Delhi Tribunal decision in the case of Balram Kumar Mahendra vs. ITO passed in ITA No. 1366 & 1367/Del/2010 (AY 2005-06) dated 31.5.2010, wherein on exactly similar facts and circumstances, the penalty u/s. 271(1)(b) was deleted by the Delhi Tribunal.

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

Above decision was pronounced on 25TH July, 2023

Sd/-

(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRB

Copy forwarded to: -

1. Appellant.
2. Respondent.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar