

IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR

BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER

ITA Nos. 119 & 120/Jodh/2022
(ASSESSMENT YEARS- 2010-11 & 2012-13)

Sh. Sangram Ram S/o Dharma Ram, Outside Jassusar Gate, Bikaner- 334001.	Vs	ITO, Ward-1(1), Bikaner.
(Appellant)		(Respondent)
PAN NO. ABUPR 0825 M		

Assessee By	Shri Suresh Ojha (Adv.)
Revenue By	Ms. Nidhi Nair, JCIT-DR
Date of hearing	17/01/2023
Date of Pronouncement	20/01/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

These are two appeals filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi (herein after referred as “NFAC”), Ld. CIT(A) for the assessment years 2010-11 & 2012-13 both dated 01.08.2022 respectively. Since the issues involved are common in all the

appeals were heard together, therefore, these are being disposed off by this common order for the sake of convenience and brevity.

2. We take ITA No. 119/Jodh/2022 for the A.Y. 2010-11 wherein

following grounds have been raised by the assessee:-

- “1. That the levy of penalty by the ITO and sustained by the CIT(A) is illegal and against the law.
2. That the penalty was not properly initiated therefore in absence of proper initiation of penalty is illegal and against the law.
3. That the penalty notice is not proper notice therefore the levy of penalty and sustained by CIT(A) is illegal.
4. That the levy of penalty and sustained by CIT(A) is excessive and high
5. That the assessee was prevented by reasonable cause.
6. That act of AO is based the penalty of 271(1)(c) kept in absence and on the same ground this penalty was imposed u/s 271(1)(b) of it Act.
7. That as per judgment of Rajasthan High court delivered in case of Ramesh Chand Modi 249 ITR 323 not decided each ground as such the order of CIT(A) is illegal.”

3. Briefly the facts of the case are that the assessee is an individual and receives income from agricultural activities. The assessment u/s 143(3)

r.w.s. 147 of the I.T. Act was completed by the AO on 27.12.2017 determining the total income at Rs.3,63,518/-. The Id. PCIT, Jodhpur vide his order dated

05.03.2021 u/s 263 of the I.T. Act has set aside the assessment order of the AO for not examining the agricultural income of the assessee of

Rs.1,45,000/- which was claimed as exempt by him. Subsequently, the AO completed the assessment u/s 147 r.w.s. 263 of the I.T. Act on 01.12.2021, wherein he assessed the total income at Rs.5,08,518/- by not allowing the agricultural income of Rs.1,45,000/- as exempt. The AO also levied penalty u/s 271(1)(b) of the I.T. Act of Rs.10,000/- for not complying to the notices issued u/s 142(1) of the I.T. Act. Aggrieved by this, the assessee has preferred an appeal before CIT(A).

4. In the aforesaid order, the AO issued notice to the assessee u/s 143(2) of the I.T. Act, 1961 and re-adjudicated the matter. The relevant part of the assessment order is reproduced as under:-

“1. In this case, assessment proceedings u/s 143(3)/147 was completed on 29.12.2017. Later, the Pr. Commissioner of Income Tax-1, Jodhpur vide order us 263 dated 05.03.2021, set-aside, the assessment order passed u/s 143(3)/147 dated 29.12.2017.

2. Thereafter, the assessment in this case was completed U/s 147/144 r.w.s. 263 on 01.12.2021 at assessed income of Rs.5,08,518/- by the National Faceless Assessment Centre, Delhi. During the assessment proceedings, a notice u/s 142(1) of the Income-tax Act, 1961 was issued to the assessee on 02.08.2021, requiring him

to prepare and furnish information/details with supporting documents. The notice was duly served upon the assessee. As per this notice, the assessee had to compliance to the notice by 09.08.2021. However, the assessee neither filed his return nor submitted any reply in this regard. In view of this, penalty proceedings u/s 271(1)(b) of the IT Act, 1961 were initiated for non-compliance to the notice u/s 142(1) dated 02.08.2021 and show cause notice U/s 274 of the Income Tax Act, 1961 was issued to the assessee along with assessment order on 01.12.2021. The assessee was required to appear before the Assessing Officer either personally or through a duly authorized representative 31.12.2021 to show cause why an order imposing a penalty on him should not be made under section 271(1)(b) of the Income Tax Act, 1961. The said notice was duly served upon the assessee but no one appeared on the given date. Thereafter, two more notices u/s 274 r.w.s 271(1)(b) have been issued to the assessee on 26.04.2022 and 19.05.2022. The said notices duly served upon the assessee.

3. Thereafter, this office has received response from assessee's brother through ASK on 30.05.2022 in which he has requested that he required at least 30 days for compliance to penalty notice. However, the same is not possible as penalty is getting time barred on 30.06.2022. Therefore, a letter was issued to the assessee on for submission of reply/response to the penalty notice within 5 days to receipt of letter. The same was duly served upon the assessee on 31.05.2022 itself but no response has been received so far.

4. In view of the above, it is clear that the assessee has been given more than sufficient time to represent his case either personally or through a duly authorized representative but the assessee has not filed his response. This clearly establishes that the assessee has nothing to submit in the matter.

5. In view of the above discussion, a penalty amounting to Rs.10,000/- is hereby imposed as per the provision of section u/s 271(1)(b) of the I.T. Act, 1961 after providing due and reasonable opportunities of being heard to the assessee.”

5. Being aggrieved by the AO the assessee preferred an appeal before the Id. CIT(A) and the findings are reproduced as under:-

“5.1 I have carefully gone through the records and facts of the case. The appellant has raised five grounds of appeal which challenge the levy of penalty of Rs.10,000/- u/s 271(1)(b) of the I.T. Act. Since these grounds of appeal are interlinked, these are being adjudicated together.

5.2 The appellant had filed the income tax return in response to the notice u/s 148 of the I.T. Act by the AO, and the appellant declared an agricultural income of Rs.1,45,000/-. The assessment u/s 143(3) r.w.s. 147 of the I.T. Act was completed by the AO on 27.12.2017 determining the total income at Rs.3,63,518/-.

5.3 It was observed from the balance sheet filed by the appellant that no agricultural land was shown under the head "Fixed Assets" and agricultural income declared by the appellant was accepted by the AO during the course of assessment proceedings. The PCIT, Jodhpur vide his order dated 05.03.2021 u/s 263 of the I.T. Act has set aside the assessment order of the AO for not examining the agricultural income of the appellant of Rs.1,45,000/- which was claimed as exempt by him.

5.4 The AO during the assessment proceedings u/s 147 r.w.s 263 of the I.T. Act issued various statutory notices u/s 142(1) of the I.T. Act and a show cause notice to the appellant. However, there was no response from the appellant to any of the notices issued and served on the appellant by the AO. Subsequently, the AO completed the assessment u/s 147 r.w.s. 283 of the I.T. Act on 01.12/2021, wherein he assessed the total income at Rs.5,08,518/- by not allowing the agricultural income of Rs.1,45,000/- as exempt. The AO also levied penalty u/s 271(1)(b) of the I.T. Act of Rs.10,000/- for not complying to the notices issued u/s 142(1) of the LT. Act.

5.5 During the course of appellate proceedings, the appellant has submitted its reply in Form 35 that the AO was requested to keep the penalty proceedings in abeyance as he had filed an appeal against the assessment order.

5.6 The AO in his penalty order dated 10.06.2022 levied penalty of Rs.10,000/- u/s 271(1)(b) of the I.T. Act as the appellant did not respond to various statutory notices issued u/s 142(1) of the IT. Act nor he replied to the show cause as to why an order imposing penalty should not be made on him u/s 271(1)(b) of the I.T. Act. The appellant did not respond to this notice. Subsequently, two more notices were issued by the AO on 26.04.2022 and 19.05.2022 and which were duly served upon the appellant.

5.7 The appellant's brother replied on 30.05.2022, and requested that he required 30 days to comply to the penalty notice. Another letter was issued to the appellant on 31.05.2022 for submission of his reply within five days of receipt of the letter and which was also served upon him on 31.05.2022 However, there was no response from the appellant. The AO passed the penalty order on 10.06.2022 as the case was getting barred by limitation of time on 30.06.2022.

5.8 In response to one of the notice, the appellant's brother had appeared before the AO proves the fact that all these notices were served upon the appellant. It is observed from the above facts that, even though various notices were issued to the appellant and duly served upon him, the appellant did not choose to respond to these notices deliberately. However, it made a plea to the AO to keep the penalty proceedings in abeyance as the appellant had appealed against the assessment order. The AO could not postpone the penalty proceedings as it was getting barred by limitation of time on 30.06.2022. The grounds of appeal which have been raised by the appellant are absolutely general in nature, namely, the levy of penalty is illegal and against the law, the notice is not a proper notice, the levy of penalty is excessive, he was prevented by reasonable cause etc. Hence, the grounds of appeal filed by the appellant are dismissed. Therefore, in view of the above facts, the penalty levied of

Rs.10,000/- u/s 271(1)(b) of the I.T. Act is confirmed. 5.9 Accordingly, these grounds of appeal are treated as dismissed.”

6. The Id. DR supported the order of the lower authorities.

7.1 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Id. AR for the assessee has replied for the notice issued by the Department that the assessee is going to prefer an appeal before the Id. CIT(A)/NFAC against the order whose copy was provided to the assessee now and requested the Assessing Officer that the penalty proceeding may kindly kept in abeyance and submit proof of filing the appeal.

Again the Id. AR for the assessee submits again reply of notice dated 20.06.2022 and prayed for the same. Further, once again the Id. AR for the assessee has sent reply dated 04.08.2022 for the notice u/s 271(1)(c) of the Income Tax Act that the appeal of the assessee against the addition has been accepted and requested to drop the penalty proceeding and it may be treated as compliance of notice issue previously.

7.2 We are of the view that the AO had levied the penalty at Rs. 10,000/- for non compliance of notices Under section 142(1) of the Act. As it was clear from the provisions of Section 271(1)(b) that this provision can be invoked only for non compliance of notice Under section 115WD (2) or Section

115WE(2) or Section 142(1) or 143(2) or directions issued Under section

142(2A) of the Act. Therefore, other than the default committed by the assessee specified in clause (b) of section 271(1) the non compliance to the other notices or directions would not attract the penalty Under section 271(1)(b) of the Act. Further, we perused the documentary evidence of the assessee's reply notices on 14.06.2022, 20.06.2022 and 04.08.2022 for requesting to treat as compliance of reply of notice in which there was a reasonable cause to treat.

7.3 In our considered opinion, that the assessee was served with the notices issued by the AO and subsequently reply of notices were sent by the assessee is also on record. The reasons explained by the assessee were bonafide and reasonable before the CIT (A) where the ld. CIT(A) has not taken into consideration.

7.4 Therefore, we set aside the order passed by Id. CIT(A) and the penalty imposed Under section 271(1)(b) of the Act for non compliance of Section

142(1) is deleted. The appeal of the assessee is allowed.

8. As regards the appeal of the assessee in ITA No. 120/Jodh/2022 for the assessment year 2012-13 in the matter of section 271(1)(b) of the Act, the

Bench has allowed the appeal of the assessee in ITA No. 119/Jodh/2022 for the assessment year 2010-11 being similar issue. Hence, the decision taken by the Bench in ITA No. 119/Jodh/2022 for the A.Y. 2010-11 shall apply mutatis mutandis in the case of the assessee for the A.Y 2012-13. Hence, this appeal of the assessee is allowed.

In the result, both appeals of the assessee are allowed.

Order pronounced in the open Court on 20/01/2023.

Sd/-

Sd/-

(B. R. BASKARAN)
ACCOUNTANT MEMBER

(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 20 /01/2023

*Santosh

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant
Registrar
Jodhpur
Bench