

आयकर अपीलीय अधिकरण
मुंबई पीठ "ई", मुंबई
श्री जी.एस.पन्नु, अध्यक्ष एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " E", MUMBAI
BEFORE SHRI G.S.PANNU,PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 1870मुं/2020(नि. व.2017-18)
ITA NO.1870/MUM/2020(A.Y.2017-18)

Triumph International Finance India Limited,
Oxford Centre, 10, Shorff Lane,
Colaba Causeway,
Colaba, Mumbai 400 005.

PAN: AAACE-0308-A

..... अपीलार्थी /Appellant

बनाम Vs.

Dy. Commissioner of Income Tax,
Central Circle 7(1),
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Akash Kumar

प्रतिवादी द्वारा/Respondent by : Dr.P.Daniel

सुनवाई की तिथि/ Date of hearing : 15/12/2021

घोषणा की तिथि/ Date of pronouncement : 10/03/2022

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals) -49, Mumbai (in short 'the CIT(A)') dated 12/10/2020 confirming the levy of penalty under section 272A(1)(d) of the Income Tax Act, 1961 (in short 'the Act'), for the Assessment Year 2017-18.

2. Shri Akash Kumar appearing on behalf of the assessee submitted that penalty has been levied by the Assessing Officer for assessee's non-compliance to the notice

issued under section 142(1) of the Act. The Id. Authorized Representative of the assessee submitted that the said notice was issued to the assessee electronically. The assessee was not carrying out any business activity, therefore, was operating with minimal employees during the relevant period. This fact is also evident from para – 4 of the assessment order dated 27/12/2019 for the impugned assessment year. The Department was gradually moving towards faceless assessment /e-assessment and hence, stopped physical serving notices to the assessee in the year 2019. This being the first year of online interface, the employees of the assessee company were not aware that notices were being issued electronically. It was only after the order levying penalty under section 272A(1)(d) along with the notice of demand of Rs.10,000/- was served on the assessee, the assessee came to know about the ongoing assessment proceedings. Thereafter, the assessee immediately contacted their Chartered Accountant and filed reply vide letter dated 24/12/2019 and, thereafter, on 26/12/2019. After the assessee had furnished required information/documents to the Assessing Officer, the assessment was completed under section 143(3) of the Act vide order dated 27/12/2019. The facts narrated above would show that the assessee has not wilfully ignored the notice issued by the Assessing Officer. The non-compliance of the notices issued under section 142(1) of the Act was for the bonafide reasons explained above. The Id. Authorized Representative for the assessee prayed that since assessee participated in assessment proceedings on coming to know about on going assessment proceedings, no penalty u/s.272A(1)(d) of the Act be levied. The Id. Authorized Representative of the assessee in support of his contention placed reliance on the decision of Tribunal in the case of JIK Industries Ltd. vs. DCIT in ITA No.4759/Mum/2014 for assessment year 2005-06 decided on 18/02/2016.

3. Per contra Dr. P.Daniel representing the Department vehemently defended the impugned order. The Id. Counsel submitted that the assessee deliberately failed to appear before the Assessing Officer. The explanation furnished by the assessee

for non-appearance before the Assessing Officer is an after thought. No such explanation was furnished by the assessee before the Assessing Officer.

4. We have heard the submissions made by rival sides. The Assessing Officer vide order dated 21/12/2019 has levied penalty of Rs.10,000/- under section 272A(1)(d) of the Act for non-compliance of the notice issued under section. 142(1) of the Act. Undisputedly, no explanation was furnished by the assessee before the Assessing Officer for non-compliance of the notice under section 142(1) of the Act. As per the contentions of Id. Authorized Representative of the assessee, the notice under section 142(1) of the Act was served on the assessee electronically. The Department was gradually moving towards e-assessments and the notices were being served to the assessee online/electronically and the year 2019 being the first year of this shift from physical to electronic mode coupled with the fact that assessee was not carrying out any business operations during the relevant period and hence, was working on minimal employees, the employees of the assessee failed to take note of the notice issued electronically. We are satisfied that the assessee has been able to show reasonable cause for not responding to the initial notice issued under section 142(1) of the Act. It is pertinent to mention here that subsequently on learning about ongoing assessment proceedings, the assessee appeared before the Assessing Officer and furnished the requisite details. The Assessing Officer after taking note of the documents/submissions of the assessee has passed the assessment order under section 143(3) of the Act . It is not a case of absolute non-appearance of the assessee before the Assessing Officer.

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.

6. In the result, impugned order is set-aside and appeal by the assessee is allowed.

Order pronounced in the open court on Thursday the 10th day of March, 2022.

Sd/-

(G.S.PANNU)

अध्यक्ष/ PRESIDENT

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 10/03/2022

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

ITAT, Mumbai