



**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH MUMBAI**

**BEFORE HON’BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
HON’BLE SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 995/Mum/2024
(Assessment Year: 2020-21)**

Shilpa Shetty Kundra 57/A, Kinara, Gandhi Gram Road, Juhu – ACCPPS6622P	Vs.	DCIT, CC-5(2) Kautilya Bhavan BKC Mumbai – 400051.
PAN/GIR No. ACPPS6622P		
(Applicant)		(Respondent)

Assessee by	Ms. Ritu Kamal Kishore
Revenue by	Shri Leyaqt Ali Aafaqui, Sr. Ld.AR

Date of Hearing	26.03.2025
Date of Pronouncement	04.04.2025

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the assessee challenging the impugned order 31.01.2025 passed u/s 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre, Delhi / CIT(A) Mumbai, for the A.Y: 2020-21.

2. All the grounds raised by the assessee are interrelated and interconnected and relates to challenging the order of CIT(A) in upholding penalty u/s 272A(1)(d) of the act therefore we have decided to take up all the grounds

together and to adjudicate the same through the present consolidated order.

3. As per the facts of the present case, AO passed order thereby levying penalty of Rs.20,000 in respect of non-compliance of the notice u/s 142(1) of the act dated 04.08.2022 and 11.08.2022. In this regard Ld. AR submitted that during the Assessment Proceedings the Assessing Officer issued notice u/s 142(1) dated 04.08.2022 to the assessee calling upon to file certain details and documents by 09.08.2022, thereby providing with merely five working days to respond to the said notice. Further, the Assessing Office again issued another notice u/s 142(1) of the Act dated 11.08.2022 thereby requesting the assessee to file documents and explanations by 17.08.2022 by providing only six days' time to respond to the said notice. It was further submitted that the assessee was repeatedly given '*insufficient time*' to respond to the notices, more particularly when during the relevant period, the COVID pandemic was still continuing and several assesseees were facing genuine hardship in making compliances. It was also submitted that during the Assessment Proceedings the assessee filed letter dated 15.09.2022 vide e-filing acknowledgment number 496018951150922 in response to notice u/s 142(1), dated

04.08.2022 and 11.08.2022. Further, it is submitted that after considering the said submissions the Assessing Officer vide order dated 21.09.2022 made additions u/s 143(3) of the Act. In this regard the assessee has placed reliance upon the decision of ITAT Raipur Bench in the case of ***Bhavana Modi Vs ITO in ITA No. 298/RPR/2024*** dated 16.08.2024.

4. On the other hand, Ld. DR relied upon the orders passed by the revenue authorities.

5. We have heard the counsels for both the parties, perused the material placed on record, judgements cited before us and also the orders passed by the revenue authorities.

From the records, we found that the penalty in the present case has been levied in respect of non-compliance of notices u/s 142(1) of the act dated 04.08.2022 and 11.08.2022. However, we found that in response to the subsequent notices, the assessee made necessary compliances and accordingly assessment was completed u/s 143(3) dated 21.09.2022. Hence, it can be seen that AO himself has deemed to have condoned the non-compliance by the assessee on earlier occasions, because

subsequently the necessary replies containing information and evidences were furnished by the assessee to assist the AO in completing of assessment. Since the assessment in the present case was completed u/s 143(3) of the Act, therefore, penalty u/s 272A(1)(d) of the act cannot be imposed as has been held by the Coordinate Bench of the Tribunal in the case of **Bhavana Modi Vs ITO in ITA No. 298/RPR/2024** dated 16.08.2024. The relevant portion is reproduced here in below:

8. We have considered the rival submissions, perused the material available on record and case laws relied upon by the assessee. Admittedly, in the present case, the assessee failed to respond certain notices of the Ld. AO, which were issued u/s 143(2) and 142(1) of the Act, however, in response, subsequent notices, the assessee has made necessary replies and accordingly assessment was completed u/s 143(3), therefore, respectfully, following the analogy drawn in the decision referred to (supra), we find that the penalty-imposed u/s 272A(1)(d) of the Bhavna Modi Act is not justifiable in the present case, as the Ld. AO himself has deemed to have condoned the absentee of assessee or his Authorized Representative on earlier occasions, subsequently the necessary information and evidences were furnished by the assessee to assist in the completion of the assessment and since assessment was completed u/s 143(3) of the Act, the penalty u/s 272A(1)(d) cannot be imposed. Under such facts and circumstances, considering the ratio of law followed in various judicial decision, we find it appropriate to set aside the order of Ld. CIT(A), and direct the Ld. AO to delete the penalty.'

ii. Decision of Hon'ble ITAT, Mumbai Bench in the matter of Shri Hemant Manmohan Panchamiya vs Addl/ Joint/ Deputy/ ACIT/ITO/National EAssessment Centre, Delhi, ITA No.

1854/Mum/2023, dated 29.08.2023. The relevant portion of the same is re-produced for your honour's ready reference:

**6. After considering the relevant findings given in the impugned orders as well as material placed on record, as noted above, we find that it is not in dispute that assessee did comply with all the notices including the notice dated 06/11/2019 and had furnished all the details as required in the said notices. However, the charge of the Id. AO is that date fixed for compliance of notice was 11/11/2019, whereas assessee had furnished the reply on a later date and not on the appointed date. The penalty u/s. 271A(1) (d) is leviable if any person fails to comply with the notice u/s.142(1) or 143(2) or direction issued u/s.142(2A). It does not provide that even if the details have been furnished and assessee has complied with the notice beyond date mentioned in the said notice will lead to levy of penalty under this Section. Thus, once assessee has complied with the notice u/s. 142(1) and the said compliance has been accepted during the course of assessment proceedings, we do not find any reason in sustaining the penalty. Accordingly, the penalty of Rs.10,000/- levied u/s 271A(1)(d) is deleted."*

iii. Decision of Hon'ble ITAT Delhi Bench in the matter of DLF Commercial Enterprises v. Assistant Commissioner of Income-tax, Circle-52(1), New Delhi, [2021] 131 taxmann.com 305 (Delhi - Trib.). The Hon'ble Tribunal held that where assessee did not comply with notice under section 142(1), however, assessment order was passed under section 143(3) and not under section 144, it meant that Assessing Officer had expressed satisfaction with compliances made by assessee, therefore levy of penalty under section 271(1)(b) was not justified and had to be cancelled.

iv. Decision of Hon'ble ITAT Agra Bench in the matter of Aaryan Motels v. Deputy Commissioner of Income Tax, Central Circle, Agra, [2017] 88 taxmann.com 7 (Agra Trib.) The Hon'ble Tribunal held that where AO by issuing notice under sec. 142(1) sought voluminous information on single day and that too within a short period of four days of issuing notice, it could be concluded that no effective opportunity of hearing was

provided to assessee in terms of sec. 274(1) and, consequently, impugned penalty order passed under sec. 271(1)(b) was to be set aside.

6. Therefore, considering the facts of the present that the assessee while filing reply dt. 15.09.2022 along with necessary information/evidences to subsequent notice dated 12.09.2022 has specifically mention that the reply is being filed in respect of all the earlier notices and has thus has assisted the AO in completion of the assessment. Moreover the assessment order in the present case was passed u/s 143(3) and not u/s 144 of the Act, which means that AO had expressed his satisfaction with compliances made by the assessee.

7. Therefore in view of our above discussion and also keeping in view the principles laid down in the decision of Coordinate Bench of ITAT in the case ***Bhavana Modi Vs. ITO (supra)*** the Levy of penalty of Rs.20,000/- u/s 272A(1)(d) of the act in the present case is invalid. Hence, considering the ratio of law followed in various judicial decisions as discussed by us above, we find it appropriate to set aside the order of Ld. CIT(A) and direct the AO to delete the penalty and it is ordered accordingly. Thus all the above grounds as raised by the assessee stands allowed .

8. Consequently, the appeal filed by the assessee is allowed with no orders as to cost.

Order pronounced in the open court on 04.04.2025.

Sd/-

(RENU JAUHRI)
ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 04/04/2025

KRK, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai