

## **ITAT set-aside penalty order as assessee was asked to furnish voluminous info within short period of 4 days**

**Summary – The Agra ITAT in a recent case of Aaryan Motels., (the Assessee) 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**

### **Facts**

- For relevant assessment years, the Assessing Officer issued a notice under section 142(1) dated 7-12-2015 fixing the date for compliance on 11-12-2015. Since assessee failed to comply with said notice, the Assessing Officer imposed seven penalties under section 271(1)(b) for seven assessment years.
- The assessee filed its appeal contending that there was only one default as per the provisions of section 271(1)(b), for not making compliance of the notice issued under section 142(1), for which, only one penalty could be imposed.
- The Commissioner (Appeals) having rejected assessee's submission, confirmed the penalty order.
- On second appeal:

### **Held**

- Section 274(1) states that 'no order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard'. Section 274(1) merely reiterates the already existing basic principle of natural justice affording opportunity of hearing. As available from the words employed in the section, the section is applicable to penalty orders under section 271(1)(b), which falls under Chapter (XXI) of the Act, of which Chapter, section 274(1) also forms a part. As per section 274, no penalty order under section 271(1)(b) can be passed without affording a reasonable opportunity of being heard. Now, undisputedly, a reasonable opportunity can be said to be provided only when a proper notice is issued to the assessee.
- In the instant case, the notice under section 142(1) has been issued for six years comprising assessment years 2008-09 to 2013-14, fixing the compliance on one single day. It is noteworthy that the non-application of mind of the Assessing Officer is glaringly evident from the fact that though as per the heading of the notice, it is for assessment years 2008-09 to 2013-14, the penalty has been imposed for assessment year 2014-15 also. The Commissioner (Appeals) also has confirmed the penalty for assessment year 2014-15 without application of mind. Further, as per para 9(b) of the notice, information as on 1-4-2003 has been asked for, which was beyond the purview of the Assessing Officer under the notice issued under section 142(1).

- The notice was issued on 7-12-2015. The compliance was required to be made on 11-12-2015. Information was asked on 27 points. Compliance for such voluminous information was required one single day, within a period of four days. Now, by any stretch of imagination, in such a short period of four days, it is well-nigh impossible for such voluminous documentary information, comprising details, facts and figures, to be gathered, collated, compiled and presented before the Assessing Officer. That being so, the notice issued can, in no manner, be said to be a proper notice giving 'reasonable opportunity of being heard' to the assessee.
- The grievance of the assessee is justified. Opportunity of hearing needs to be an effective opportunity and not a mere formality or an *eye wash*, as is the case herein. The Commissioner (Appeals) has observed that since the assessee has not shown any regard to the statutory notice issued by the Assessing Officer, therefore, penalty imposed for each default deserves to be sustained for every assessment year concerned and is confirmed for all the assessment years.
- This is not sustainable in law, as considered above. No effective opportunity of hearing has ever been provided to the assessee, as available from the facts and circumstances of the case, and even otherwise, the notice is bad in law, being vague, as discussed accordingly, the single consolidated notice issued under section 142(1) for the seven years comprising assessment years 2008-09 to 2013-14 is cancelled. As such, all the seven penalties imposed for the alleged non-compliance of the said notice no longer survive and they are also cancelled.
- In the result, the appeals are allowed.