

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, AHMEDABAD**

**BEFORE DR. BRR KUMAR, VICE PRESIDENT &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. Nos.1797 & 1843/Ahd/2024  
(Assessment Years: 2012-13 & 2013-14)

Abdulmannan Mohammedkasad Bastawala, C/20, Bad-E-Firdosh Society, Sarkhej Road, Vejalpur, Ahmedabad-380005	Vs.	Income Tax Officer, Ward-5(3)(1), Ahmedabad
[PAN No.AODPB6975Q]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Chetan Agrawal, C.A.
<b>Respondent by:</b>	Shri V K Mangla, Sr. DR

<b>Date of Hearing</b>	16.12.2024
<b>Date of Pronouncement</b>	15.01.2025

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

Both the appeals have been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 23.08.2024 passed for A.Ys. 2012-13 & 2013-14. Since the common facts and issues are involved for both the years under consideration, all the cases are taken up together.

2. The assessee has taken the following grounds of appeal:-

**ITA No. 1797/Ahd/2024 (A.Y. 2012-13)**

“1) Learned CIT(A) erred in law as well on fact in upholding the penalty of Rs. 30,000/- u/s. 271(1)(b) of the Act imposed by Ld. A.O.”

**ITA No. 1843/Ahd/2024 (A.Y. 2013-14)**

*“1) Learned CIT(A) erred in law as well as on facts in upholding the penalty of Rs. 30,000/- u/s. 271(1)(b) of the Act imposed by Ld. AO.”*

3. The brief facts of the case are that the Assessing Officer observed that the assessee had incurred substantial expenditure totaling to Rs. 19,96,363/- through several credit cards held by the assessee, during the impugned assessment year. The Assessing Officer observed that on examination of records it was found that the assessee was receiving monthly salary from M/s. Blue Dart Express Ltd. and the assessee had filed return of income declaring salary income only. Therefore, the Assessing Officer issued several notices of hearing asking the assessee to explain the source of expenditure. The assessee, vide email dated 08.12.2017 informed the Assessing Officer that he is a salaried person and the above transactions totaling to Rs. 19.96 lakhs on his credit cards were made by his friend, by misusing the credit cards held by the assessee and his friend is now absconding. The assessee stated that he has not made these transactions on these credit cards and has also not paid the dues of the credit card companies. The Assessing Officer, however, confirmed the addition of sum of Rs. 19,96,363/- on account of unexplained expenditure and also initiated proceedings under Section 271(1)(b) for failure to comply with notices issued under Section 142(1) of the Act dated 16.06.2019, 12.09.2019 and 12.11.2019.

4. In appeal Ld. CIT(A) confirmed the levy of penalty on the ground that assessee has deliberately and willfully not complied with statutory notices issued under Section 142(1) of the Act.

5. The assessee is in appeal before us, against the order passed by Ld. CIT(A) confirming the levy of penalty under Section 271(1)(b) of the Act.

6. In case of **Vedabai vs. Shantaram Baburao Patil 253 ITR 798 (SC)**, the Hon'ble Supreme Court held that the expression "reasonable cause" should be construed liberally so as to advance substantial justice.

7. In the case of **Charu Modi Bhartia vs. Deputy Commissioner of Income-tax, Central Circle-26, New Delhi [2019] 104 taxmann.com 390 (Delhi - Trib.) [26-03-2019]**, the ITAT held that where in response to notice issued under Section 142(2) requiring assessee to furnish information in respect of an account maintained with a bank in foreign country, assessee had categorically submitted before Assessing Officer that alleged bank account did not belong to her at all, it could not be said that assessee had failed to comply with said notice and, thus, impugned levy of penalty under Section 271(1)(b) was unjustified.

8. In the case of **Balram Kumar Mahendra 21 taxmann.com 222 (Delhi)**, the Tribunal held that Change of address can be a reasonable cause under Section 273B for non-compliance of notice under Section 143(2) by assessee, and, therefore, penalty under Section 271(1)(b) cannot be imposed.

9. In the case of **Smt. Rekha Rani vs. Deputy Commissioner of Income-tax, Central Circle-8, New Delhi [2015] 60 taxmann.com 131 (Delhi - Trib.) [2015] 154 ITD 617 (Delhi - Trib.) [06-05-2015]**, the ITAT held that penalty under Section 271(1)(b) cannot be imposed for each and

every notice issued under Section 143(2), which remained not complied with on part of assessee, but it should be restricted to first default only.

10. In the instant facts, we observe that in response to notice issued by the Assessing Officer the assessee categorically replied that these expenditures had not been incurred by the assessee and that credit card has been misused by his friend to make the aforesaid expenditures and that the assessee has also not paid the dues of the credit card companies as well. Therefore, once the Assessing Officer has noted in his order that the assessee has given an explanation in response to notice issued by the Assessing Officer asking for details of expenditure done on credit cards, it cannot be said that there was non-compliance by the assessee in response to notices issued by the Assessing Officer. We observe that facts for A.Y. 2013-14 are also identical to A.Y. 2012-13, wherein assessee submitted that expenditures on the credit cards were not made by the assessee, but the credit card of the assessee had been misused by his friend, who is now absconding.

11. In our view, considering the facts of the instant case, in the interest of justice, penalty under Section 271(1)(b) of the Act is liable to be deleted for both the assessment years under consideration before us.

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

<b>This Order is pronounced in the Open Court on</b>	<b>15/01/2025</b>
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**Sd/-**  
**(DR. BRR KUMAR)**  
**VICE PRESIDENT**

Ahmedabad; Dated 15/01/2025  
*TANMAY, Sr. PS*

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

TRUE COPY

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad