

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F", NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.A. No. 1295/DEL/2014		
A.Y. : 2004-05		
M/S PCB CONSULTANTS PVT. LTD., 301, DAKHA CHAMBER, 2068/38, NAI WALA, KAROL BAGH, NEW DELHI - 5 (PAN: AAACP8493K)	VS	ACIT, CENTRAL CIRCLE-23, NEW DELHI
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by : None  
Department by : Sh. Shravan Gotru, Sr. DR

Date of Hearing: 13.04.2016

Date of Order : 03-05-2016

**ORDER**

**PER H.S. SIDHU : JM**

This appeal by the assessee is directed against the Order dated 20.11.2013 passed by the Ld. CIT(A)-XII, New Delhi for asstt. year 2004-05 on the following grounds:-

1. Looking into the facts and circumstances of the case and in law, the AO has erred in levying penalty u/s. 271(1)(b) of Rs. 20,000/- on illegal and untenable grounds and the CIT(A)-XII

has erred in sustaining the same on untenable and illegal grounds. Hence, the penalty, as such, may be quashed.

2. It is prayed that appellant assessee may be permitted to add, amend, delete or substitute any grounds of appeal on or before the date of hearing.

2. In this case Assessing Officer noted that for assessment year 2004-05, assessee failed to comply with the two notices issued u/s. 142(1) of the I.T. Act. By the Assessing Officer on 19.8.2011 and 13.10.2011 respectively. AO further noted that assessee has also failed to comply with the show cause notices issued for the penalty proceedings. Hence, the Assessing Officer imposed penalty of 20,000/- (Rs. 10,000/- for each of 2 non-compliances i.e. on 30.8.2011 and 13.10.2011 respectively) vide order dated 25.6.2012 passed u/s. 271(1)(b) of the I.T. Act, 1961.

3. Against the aforesaid penalty order, assessee appealed before the Ld. Commissioner of Income Tax (A), who vide impugned order date 20.11.2013 confirmed the levy of penalty of Rs. 20,000/-.

4. Against the above order the Assessee is in appeal before us.

5. In this case, Notice of hearing to the assessee was sent by the Registered AD post, in spite of the same, assessee, nor his authorized representative

appeared to prosecute the matter in dispute, nor filed any application for adjournment. Keeping in view the facts and circumstances of the present case and the issue involved in the present Appeal, we are of the view that no useful purpose would be served to issue notice again and again to the assessee, therefore, we are deciding the present appeal *ex parte qua* assessee, after hearing the Ld. DR and perusing the records.

6. Ld. DR relied upon the orders of the authorities below.

7. We have heard the Ld. DR in light of the material produced before us. We find that in this case the penalty of Rs. 20,000/- has been imposed on account of non-compliance by the assessee of two notices issued in connection with assessment year 2004-05. We find that Assessee during the appellate proceedings has submitted as under:-

“That the initial notice issued by the AO u/s. 148 was never served on the assessee and notice issued later on u/s. 142 could not be met by the assessee as the Principal Officer of the Company, Shri Prem Batra was suffering from Cancer and was not in a position to prepare detail and submit it before the AO. In fact, Mr. Prem Chand Batra was the key man in the company and was looking after all the financial, taxation and accounting matters of the company. In fact, the Director of the Company was so much upset

because of diagnosis of the Cancer that they could not appear and even come and discuss the issue with the AO. In fact the Counsellor appear in one of the hearing also conveyed this fact to the AO orally. The documents relating to suffering of cancer of Mr. Prem Chand Batra and Affidavit by Director of the Company in this regard are attached herewith. Hence, in view of the above circumstances, your honor is prayed that the penalty may be dropped.”

8. We have heard the Ld. DR and perused the records carefully especially the impugned order. Keeping in view of the aforesaid reasons mentioned by the assessee for non-compliance of the notices in dispute, we are of the view that the reasons for non-compliance of notices seems to be genuine and justified. Hence, the assessee's conduct was not contumacious to warrant levy of penalty. Therefore, on the facts and circumstances of the case levy of penalty of Rs. 20,000/- is liable to be deleted.

9. In this regard, we place reliance of the Hon'ble Apex Court decision rendered by a larger Bench comprising of three of their Lordships in the case of Hindustan Steel vs. State of Orissa in 83 ITR 26, wherein it was held that *“An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and*

*on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act, or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute.”*

10. In the background of the aforesaid discussions and precedent, we delete the levy of penalty of Rs. 20,000/- and quash the orders of the authorities below.

11. In the result, the Appeal filed by the Assessee is allowed.

Order pronounced in the Open Court on 03/05/2016.

SD/-

**[PRASHANT MAHARISHI]  
ACCOUNTANT MEMBER**

SD/-

**[H.S. SIDHU]  
JUDICIAL MEMBER**

*Date 03/05/2016*  
"SRBHATNAGAR"

**Copy forwarded to: -**

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches