

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C' NEW DELHI**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 738/Del/2014  
AY: 2010-11**

<b>Globus Infocom Limited, C-1/2, Safdarjung Development Area, New Delhi-110016 (PAN: AABCG3985C) (Appellant)</b>	<b>vs</b>	<b>DCIT, Circle-12(1), New Delhi.  (Respondent)</b>
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**Appellant by:** Mr. Pratap Gupta, CA  
**Respondent by:** Shri T. Vasanthan, Sr. DR

**Date of hearing: 13.04.2016  
Date of pronouncement: 29.06.2016**

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

This appeal has been preferred by the assessee against the impugned order dated 6.12.2013 passed by the Ld. CIT(A)-XV, New Delhi, confirming the imposition of penalty of Rs. 10,000/- u/s 271(1)(b) of the Income Tax Act, 1961.

2. Brief facts of the case are as under:-

During the course of assessment proceedings, the AO issued statutory notices under Section 143(2) and 142(1) on various dates including on 12.04.2012 calling for compliance on 19.04 2012; on 23.08.2012 for compliance on 05.09.2012; on

06.09.2012 for compliance on 13.09.2012; and on 17.09.2012 calling for compliance on 25.09.2012. However, on none of the above dates, the assessee represented before the AO through an Authorised Representative or filed any letter for adjournment. The AO thereafter, issued notice dated 11.10.2012 asking the assessee to explain as to why penalty under Section 271(l)(b) should not be imposed. On the scheduled date on 19.10.2012, the assessee preferred not to comply and, accordingly, the AO levied penalty of Rs.10,000/- on one instance of default in respect of notice dated 17.09.2012.

3. The Ld. AR assailing the imposition of penalty submitted that the AO had imposed penalty in an arbitrary manner and submitted that on various dates of hearing, the AR had visited the office of the AO who was extremely busy and therefore, neither any hearings were conducted nor was any attendance recorded. The Ld. AR also drew our attention to the first para of the assessment order dated 28.03.2013 and submitted that in the said para, the AO himself admits that "Sh. Pratap Gupta, CA/AR appeared from time to time and submitted requisite details which are placed on record". In view of this, it was pleaded that there was no wisdom in the assessment order in respect of the alleged

non-compliance. The Ld. AR also drew our attention to the decision of the co-ordinate Bench of the ITAT in the case of Akhil Bharatiya Prathmik Shikshak Sangh Bhawan Trust Vs ACIT {2008} 5 DTR (Del) (Trib) 429, in which it was held that where an order under Section 143(3) has been issued and not under Section 144 of the Act, the same implies that the subsequent compliance in the assessment proceedings is considered as good compliance and defaults earlier committed were ignored by the AO.

4. The Ld. DR submitted that the Ld. CIT (A) has carefully considered the facts of the case and the applicable case laws in the matter. As per section 271(l)(b), penalty for each instance of default may be levied @Rs. 10,000/- if the concerned authority, during the course of proceedings, is satisfied that the person has failed to comply with the statutory notice or the direction. The provisions of Section 271(l)(b) provide that no penalty is to be imposed if the person proves that there was a reasonable cause for the failure to comply with the statutory notice. It was submitted that on careful consideration of the facts of the case, the Ld. CIT (A) found that the assessee had failed to appear before the AO on at least five occasions. In fact, the AO had initiated the

penalty under Section 271(l)(b) and had sought the reply from the assessee on 19.10.2012, However, on that date also, neither the AR of the assessee appeared nor any letter in reply to the said notice was filed. In respect of the other dates of hearing also, no letter seeking adjournment was filed. The assessee claim that its AR had appeared before the AO but could not record the attendance is completely unsubstantiated. The allegation that the AO was busy with the time-barring assessment could be valid in the fag end of the year, however, all five dates on which default was made were from April, 2012 to October, 2012, during which generally there is no great pressure of time-barring assessments. Under the circumstances, he did not find any reasonable cause on the part of the assessee of not making compliance before the AO. There is no reasonable explanation as to why the assessee did not file even a letter for adjournment in the matter.

5. We have heard the rival submissions and perused the material on record. We find that the instant appeal is squarely covered by the decision of the Co-ordinate Bench of ITAT Delhi in the case of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan trust vs ACIT 5 DTR 429 (Delhi Tribunal) wherein the Coordinate Bench in paras 2.4 and 2.5 has held as under:-

*“2.4 Coming to the issue of recording of satisfaction, it may be mentioned that mere initiation of penalty does not amount to satisfaction as held by Hon’ble Delhi High Court in the case of CIT vs. Ram Commercial Enterprises Ltd. (2001) 167 CTR (Del) 321 : (2000) 246 ITR 568 (Del). In absence of recording of the satisfaction in the assessment order, mere initiation of penalty will not confer jurisdiction on the AO to levy the penalty.*

*2.5 We also find that finally the order was passed under s. 143(3) and not under s. 144 of the Act. This means that subsequent compliance in the assessment proceedings was considered as good compliance and the defaults committed earlier were ignored by the AO. Therefore, in such circumstances, there could have been no reason to come to the conclusion that the default was willful.”*

6. As the facts of this case are identical, we hold that the imposition of penalty u/s 271(1)(b) of the Act was patently wrong, specially in view of the fact that the impugned assessment order has been passed u/s 143(3). While setting aside the impugned order, we direct the Assessing Officer to delete the penalty.

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

Order pronounced in the open court on 29<sup>th</sup> June, 2016.

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: the 29<sup>th</sup> of June 2016  
‘GS’

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By order

Asstt. Registrar