

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member and
Shri N.V. Vasudevan, Judicial Member**

**I.T.A. No. 250/KOL/ 2014
Assessment Year: 2006-2007**

Shri Kamal Bhandari,.....Appellant
16, N.S. Road, 2nd Floor,
Kolkata-700 001
[PAN: ADJPB 0881 E]

-Vs.-

Income Tax Officer,.....Respondent
Ward-23(2), Kolkata

Appearances by:

Shri Sunil Surana, A.R., for the assessee

Shri Rajat Kumar Kureel JCIT, D.R., for the Department

Date of concluding the hearing : October 27, 2016

Date of pronouncing the order : December 02, 2016

O R D E R

Per Shri P.M. Jagtap, A.M.:

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-XIV, Kolkata dated 06.11.2013, whereby he confirmed the penalty of Rs.30,000/- imposed by the Assessing Officer under section 271(1)(b) of the Income Tax Act, 1961.

2. The assessee in the present case is an individual, who derives income from salary and other sources. During the course of assessment proceedings, he failed to comply with the notices issued by the Assessing Officer under section 143(2) on 21.06.2007 and 01.02.2008 and under section 142(1) on 18.01.2008. The Assessing Officer, therefore, initiated penalty proceedings under section 271(1)(b) for the said non-compliance on the part of the assessee and since the explanation offered by the assessee in response to the show-cause notice issued during the course of the said proceedings was not found acceptable by him, the Assessing

Officer proceeded to impose penalty of Rs.30,000/- (Rs.10,000/- for each default) under section 271(1)(b) of the Act.

3. The penalty imposed by the Assessing Officer under section 271(1)(b) was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and the various submissions were raised by the assessee during the course of appellate proceedings before the Id. CIT(Appeals), which, as summarised in his impugned order, were as under:-

"The appellant has disowned the fact "that he has never complied with the statutory notices issued by the A.O. u/s. 143(2), 142(1) of the Act. The appellant has further admitted before me during the course of appellate proceedings the fact that in some instances, there was no specific mention of the date of hearing in the notices issued by the A.O., e.g. notice dated 16/01/2008. In addition to this, he has also pointed out to me that on the first occasion, i.e., on 26:07.2007, (date of issue of notice u/s. 143(2) was 21/06/207), Sri Pradip Kumar Jain, the Office Assistant of the learned A/R of the assessee, Sri N.K. Goyal attended with an authorization letter but his hearing was not recorded by the A.O stating that it will be recorded when Mr. Goyal comes. The appellant further affirmed before me during the above said proceedings the fact that the second notice issued by the A.O. on 16/01/2008 was never received by him and as for the third notice or occasion, the appellant has admitted that on this occasion, the hearing took place, Mr. Goyal attended the case but the learned A.O kept insisting for the original order of the Hon'ble High Court, no paper could be furnished and hence hearing was not recorded by the A.O. Moreover, the appellant has submitted before me that non-compliance on 24/06/2009, the assessee's Accountant, Sri S.K. Sahal, met the learned A.O and requested for some time and finally a letter was also filed which can be verified from the file".

4. The above submissions made by the assessee did not find favour with the Id. CIT(Appeals), who proceeded to confirm the penalty imposed by the Assessing Officer under section 271(1)(b) for the following reasons given in paragraph no. 7 of his impugned order:-

"7.0. (a) I have carefully perused the impugned order of penalty passed by the A.O, i.e., I.T.O., Ward-23(2), Kolkata u/s. 271(1)(b) of the Act and also examined the written

submission filed by the appellant. During the appellate proceedings, the appellant has filed before me written submission, copy of assessment order passed u/s. 143(3) by the then AO, i.e., I.T. O, Ward-23(1), Kolkata, dated 26/12/2008, Vakalatnama, etc. On going through the submission filed by the appellant, I have noticed that what the A.O has contended in his order of penalty passed u/s. 271(1)(b) of the Act is quite contradictory to that of the appellant. In my view, I hold that the AO has passed the order of penalty absolutely depending on natural justice and at the same time bestowing full regard to the actual facts and circumstances of the instant case of the appellant raising thereby no suspicion over imposition of penalty amounting to Rs.30,000/-. I have also noticed that the A.O was quite inquisitive while issuing the statutory notices u/s. 143(2) and 142(1) of the Act; the A.O was very much attentive and emphatic in his action of issuing such notices of the Act to the appellant that in some such issued notices, there was no specific mention of the date of hearing, as stated by the appellant in his written submission filed during the appellate proceedings, is absolutely erroneous and liable to be ignored. In my considered view, the action of the A.O of imposing penalty amounting to Rs. 30,000/- for three consecutive failures on the part of the appellant to comply with the statutory notices issued by him to the appellant as distinctly evident in the order of penalty itself, is firmly based on a just footing and which can be entirely supported under the law. Besides that, as the appellant has contended before me that the learned A.O has not complained the fact that because of non-compliance on the part of the appellant with the notices issued by him (AO), his work has suffered or some details have not been filed at all is merely an eye-wash at the back of the appellant himself. Further, the appellant has himself argued as apparent from his written submission filed during the appellate proceedings that therefore, it can easily be accepted that the appellant/assessee has filed all the requisite details and compliance was duly made by him is also accepted as a mere aberration of the actual facts of the case by himself (appellant) under instant appeal.

(b) Considering the views/findings above, I am of the opinion that the imposition of penalty amounting to Rs. 30,000/- imposed u/s. 271(1)(b) of the I.T. Act, 1961 by the A.O is entirely acceptable in the eyes of law. The default on the part of the assessee to comply with the statutory notices issued u/s. 143(2) and 142(1) of the Act on three consecutive occasions as recorded by the A.O. in his impugned order of penalty, may be placed solely upon the

assessee; the assessee has visibly failed to discharge his sheer onus to prove the genuineness and creditworthiness of what the A.O. wanted from him during the course of hearing. The lapse lies wholly upon the appellant himself in all the phases of framing the order of penalty by the A.O, u/s. 271(1)(b) of the Act. To me, the A.O is absolutely impeccable under the law. I, therefore, have no hesitation to confirm the penalty imposed u/s. 271(1)(b) of the I.T. Act, 1961, amounting to Rs.30,000/- in the instant case of the appellant. Accordingly, the Ground No. 2 of the instant appeal stands dismissed”.

Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. The submission made by the assessee before the Id. CIT(Appeals), which has been reiterated by the Id. counsel for the assessee at the time of hearing before us, clearly shows that non-compliance to the relevant three notices issued by the Assessing Officer was duly explained by the assessee. As explained by the assessee, Shri Pradip Kumar Jain, the Office Assistant of the A.R. of the assessee Shri N.K. Goyal had appeared before the Assessing Officer on 26.07.2007 in response to the notice dated 21.06.2007, but the hearing on that date was not recorded by the Assessing Officer for want of appearance of Shri Goyal himself. As further explained by the assessee, the second notice issued by the Assessing Officer on 18.01.2008 was never received by him and in the absence of the same, he could not comply with the said notice. As regards the third notice dated 01.02.2008 issued by the Assessing Officer, it was explained by the assessee that the date of hearing was not mentioned in the said notice and he, therefore, could not comply with the same. Keeping in view these reasons given by the assessee for his non-compliance to the relevant three notices, which have not been rebutted or controverted either by the authorities below or even by the Id. D.R. by bringing any relevant material on record, we are of the view that the non-compliance on the part of the assessee to the relevant three notices issued by the Assessing Officer was for sufficient cause and it was not a

fit case to impose penalty under section 271(1)(b). In that view of the matter, we cancel the penalty imposed by the Assessing Officer under section 271(1)(b) and confirmed by the Id. CIT(Appeals) and allow this appeal of the assessee.

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

Order pronounced in the open Court on December 02, 2016.

**Sd/-
(N.V. Vasudevan)
Judicial Member**

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 2nd day of December, 2016

- Copies to :*
- (1) ***Shri Kamal Bhandari,
C/o. Shri N.K. Goyal, 2nd Floor,
Kolkata-700 001***
 - (2) ***Income Tax Officer,
Ward-23(2), Kolkata***
 - (3) ***Commissioner of Income Tax(Appeals)-XIV, Kolkata;***
 - (4) ***Commissioner of Income Tax- , Kolkata,***
 - (5) ***The Departmental Representative***
 - (6) ***Guard File***

By order

***Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata***

Laha/Sr. P.S.