

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6609/Del./2015
(ASSESSMENT YEAR : 2011-12)**

Shri Shailesh Kul Shrestha, vs. ITO, Ward 47 (1),
4/548, GF, Vaishali, New Delhi.
Ghaziabad.

(PAN : ALHPK9207D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Shailesh Kulshrestha, AR
REVENUE BY : Shri Atiq Ahmad, Senior DR

Date of Hearing : 21.09.2017
Date of Order : 28.09.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, Shri Shailesh Kul Shrestha (hereinafter referred to as 'the assessee'), by filing the present appeal, sought to set aside the impugned order dated 24.09.2015 passed by the Commissioner of Income-tax-21, New Delhi qua the assessment year 2011-12 confirming the penalty levied u/s 271(1)(b) on the grounds inter alia that :-

"1. That the L'd Commissioner of Income Tax (Appeals) has erred in sustaining the penal of Rs.80,000/- US 271(1)(b) while not appreciating

the fact that owing to the job requirement and also due to ill health of parents, assessee had to remain out of station for many days, and hence on such time he could not comply to few notices U/S 142(1) as issued by the AO.

2. That the L'd Commissioner of Income Tax (Appeals) has erred in sustaining the penalty of Rs.80,000/- U/S 271(1)(b) while not appreciating the fact that due to job requirements and also due to ill health of parents, the assessee was not available in town on many times, and hence he could not have received the notices U/S 142(1) and the assessee was not in a know that some date has been fixed in the matter.

3. That the L'd Commissioner of Income Tax (Appeals) has erred in not appreciating the fact that every time the assessee came to know the date fixed for hearing, he had attended the case before the AO . He had also got his statements etc recorded. He had infact also attended the proceedings suo moto after he came to know the notices. Thus both the Assessing Officer and the L'd Commissioner of Income Tax (Appeals) have erred in treating the assessee to be in a habit of not making compliance.

4. That the L'd Lower Authorities have erred in not appreciating the fact that the case of the assessee is covered by a reasonable cause U/S 2738 and as such, the penalty as levied be kindly deleted

5. That the penalty of Rs.80,000/- as levied U/s 271(1)(b) is illegal and deserves to be deleted.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : During scrutiny proceedings, Assessing Officer issued notice to the assessee on 17 occasions out of which

assessee appeared in person on two dates and appeared through Authorized Representative on four occasions and filed requisite documents. However, AO found the detail filed by the assessee quite scanty and proceeded to pass the assessment under section 144 of the Income-tax Act, 1961 (for short 'the Act') by making total addition of Rs.93,41,584/-.

3. AO then proceeded to initiate penalty proceedings u/s 271(1)(b) of the Act by issuing a notice u/s 274 of the Act for repeated non-compliance of the statutory notice and thereby levied the penalty amounting to Rs.80,000/- in ex-parte order.

4. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has confirmed the penalty. Feeling aggrieved, the assessee has come up before the Tribunal by way of challenging the impugned order passed by Id. CIT (A).

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Perusal of the impugned order passed by the Id. CIT (A) confirming the penalty imposed by the AO goes to prove that the penalty has merely been imposed on the ground that the assessee has not filed any reply to the notice issued u/s 274 of the Act. Ld.

CIT (A) has completely lost sight of the fact that in the chart reproduced by the AO in para 1, 2 & 3 of the assessment order tabulating the date of notice issued and date of hearing wherein AO has not specifically mentioned that assessee was not served for the first five dates of hearing particularly in the face of the fact that on the next eight hearings, assessee either appeared in person or through his authorized representative and has also filed documents which were subjectively found to be “quite scanty” by the AO. When the assessee has appeared through AR, a tax expert, it appears to be unreasonable and barbaric to burden the assessee with penalty of Rs.80,000/- who is an employee in a private firm drawing salary of Rs.25,000/- per month.

7. Moreover, perusal of the assessment order itself shows that the AO has completed the assessment by examining the entire detail of the bank accounts and property owned by the assessee. AO has nowhere mentioned that such and such documents requisitioned by him (AO) were not brought on record by the assessee. Be as that may be, the AO was having power even to summon those documents from the concerned parties, if any.

8. In view of what has been discussed above, we are of the considered view that when the assessee being a layman has engaged a tax expert to defend him during the assessment

proceedings, who has filed documents before the AO, it was a sufficient cause with the assessee not to appear on each and every date before the AO. Hence, penalty of Rs.80,000/- imposed by the AO and affirmed by the Id. CIT (A) is hereby deleted. Consequently, appeal filed by the assessee stands allowed.

Order pronounced in open court on this 28th day of September, 2017.

**Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 28th day of September, 2017
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-21, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**