

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
&  
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-6260/Del/2015  
(Assessment Year: 2012-13)**

Business Park Maintenance Services Pvt. Ltd. M-11, Middle Circle, Connaught Circus, New Delhi. AACCB9525C	vs	DCIT Circle 3(1) New Delhi.
<b>Assessee by</b>	<b>Sh. Ajay Bhavani, FCA</b>	
<b>Revenue by</b>	<b>Sh. Arun Kumar Yadav, Sr. DR</b>	

<b>Date of Hearing</b>	<b>19.09.2017</b>
<b>Date of Pronouncement</b>	<b>09.10.2017</b>

**ORDER**

**PER SHRI K.N. CHARY, JUDICIAL MEMBER**

This is an appeal by the assessee challenging the order dated 16.09.2015 in appeal no. 537/14-15 of CIT(A)-2 passed by the Ld. Commissioner of Income Tax (Appeals)-2, New Delhi (hereinafter for short called as the "Ld. CIT (A)") on the following grounds:

1. "That the orders passed by the Assessing Officer and Commissioner of Income Tax (Appeals)-2, New Delhi are bad in law and void ab initio.
2. That on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the penalty of Rs. 10,000/- imposed by the Assessing Officer u/s 271(1)(c) of the I.T. Act, 1961.
3. The appellant craves permission to add, amend, alter or vary all or any grounds of appeal on or before the date of hearing of the appeal."

2. Briefly stated facts are that the assessee filed the return of income on 26.08.2013 and notice u/s 142(1) of the Income Tax Act, 1961 (for short called as the 'Act') was issued on 30.04.2014 fixing the date for hearing on 09.05.2014. According to the assessee they have attended before the Assessing Officer on that day seeking time for filing the details. Subsequently, they received a notice dated 22.09.2014 u/s 143(2) of the Act fixing up the date of hearing on 26.09.2014 and in the meanwhile jurisdiction of the case was transferred from Central Circle 23, New Delhi to Circle 3(1), New Delhi. However, the assessee received a notice dated 26.09.2014 u/s 271 (1)(b) of the Act requiring to show cause as to why the penalty should not be levied for non attendance in respect of the notice dated 30.04.2014 issued u/s 142(1) of the Act. Assessee made due submissions before the AO to the effect that there was no default on their part in complying with the notice. However, by way of order dated 07.10.2014 AO levied a penalty of Rs. 10,000/- u/s 271(1)(b) of the Act. Appeal of the assessee was dismissed by the Ld. CIT (A) by way of impugned order. Hence, this appeal by the assessee.

3. It is the submission of the Ld. AR that as a matter of fact assessee entered appearance on 09.10.2014 before the AO seeking time for submission of the details but in view of the ensuing retirement of the AO

they were told that a fresh notice would be issued fixing the date of hearing and subsequently after the transfer of jurisdiction and case from Central Circle 23, New Delhi to Circle 3(1), New Delhi notice u/s 143(2) of the Act was issued on 22.09.2014 fixing up the date of hearing on 26.09.2014. Record speaks that this fact was argued before the AO in 271(1)(c) proceedings of the Act and without stating whether such statement was factually correct or not, the Ld. AO recorded that mere attending the office does not amount to necessary compliance with the notice. If the assessee appeared on 09.05.2014 and sought time, it cannot be said that the assessee is at default for non compliance with the notice in as much as there took place the transfer of jurisdiction and case from one circle to another and a fresh notice u/s 142(2) of the Act was issued for the appearance of the assessee on 26.09.2014. Even the Ld. CIT (A) also did not advert to the factual correctness or otherwise of the contention of the assessee that the assessee appeared before the AO, but AO himself did not conduct the proceedings on that date. Ld. CIT (A) does not seem to have adverted to this aspect but simply reiterated the observations of the AO that it was not merely attending the office of AO on a specified date but what was required of the assessee was the compliance with the requirement of the notice dated 30.04.2014. In the

circumstances, we find it difficult to hold that there is any willful non compliance with the requirement of the notice dated 30.04.2014 and the AO was not in a position to confirm or deny whether on 09.05.2014 the assessee made a request for time for compliance with the requirements of the notice dated 30.04.2014. Hence, we find it difficult to sustain the penalty and accordingly direct the AO to delete the same.

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

Order pronounced in the open court on 09.10.2017

Sd/-  
**(G.D. AGRAWAL)**  
**PRESIDENT**

Dated: 09.10.2017  
\*Kavita Arora

Sd/-  
**(K.N. CHARY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

