

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.820-824/Kol/2016
Assessment Years:2006-07 to
2010-11

Shri Ratan Kumar Paul Thana Road, Gangarampur, Dakshin Dinajpur-Pin 733124 [PAN No.AKLPP 6116 F]	बनाम / V/s.	DCIT, CC-XXVII, Aayakar Bhawan, Purva, 110 Shanti Palli, E.M. By-pass, Kolkata-107
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आवेदक की ओर से/By Assessee	Shri Subash Agarwal, Advocate
राजस्व की ओर से/By Respondent	Shri Arindam Bhattacharjee, Adl. CIT-DR
सुनवाई की तारीख/Date of Hearing	02-11-2017
घोषणा की तारीख/Date of Pronouncement	17-11-2017

आदेश /O R D E R

PER BENCH:-

These five appeals by the assessee are directed against the different orders of Commissioner of Income Tax (Appeals)-21, Kolkata of even date i.e.18.02.2016. Assessments were framed by DCIT, CC-XXVII, Kolkata u/s 153A/143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his orders dated 28.03.2014 for assessments year 2006-07 to 2010-11 respectively. Penalty levied by the Assessing Officer u/s 271(1)(b) of the Act vide his orders dated 03-09-2014. Shri Subash Agarwal, Advocate appeared on behalf of assessee and Shri Arindam Bhattacharjee, Ld. Departmental Representative appeared on behalf of Revenue.

2. In all the appeals the facts and circumstances are identical except figure, therefore all the appeals were heard together and are being disposed of by this consolidated order for the sake of convenience. We first take up the appeal in **ITA No.820/Kol/2016** relating to A.Y. 2006-07 as lead case.

3. The ground as raised by the assessee reads as under:-

“1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the penalty to the tune of Rs.10,000/- imposed by the AO u/s 271(1)(b) of the Act.

2. For that the Ld. CIT(A) ought to have deleted the entire penalty of Rs.10,000/- imposed u/s 271(1)(b) since the assessee was prevented by reasonable cause for non appearance during the course of assessment proceeding.

3. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal.”

4. The only issue raised by the assessee in this appeal is that Ld CIT(A) erred in confirming the penalty order of AO u/s 271(1)(b) of the Act.

5. Briefly, the facts are that the assessee is an Individual and belongs to Paul Group where a search & seizure operation was conducted u/s 132 of the Act. Therefore the assessee was covered under the search proceedings under section 153A of the Act. The Assessing Officer during the course of assessment proceedings u/s 153A/143(3) of the Act issued notice u/s 142(1) of the Act but the assessee failed to comply the same. The necessary details stand as under.

<u>S.No.</u>	<u>Date</u>	<u>Particulars</u>	<u>Remarks</u>
1.	16.4.2013	Notice issued U/s 142(1)	Compliance by the assessee
2.	28.10.2013	Notice issued U/s 142(1)	Non-Compliance by the assessee. In this notice the hearing date was fixed on 6.11.2013 but the Reply was filed late i.e. 13.11.2013

In view of above, the AO during assessment proceedings initiated penalty proceedings u/s 271(1)(b) of the Act. Finally, the AO after considering the reply of the assessee imposed the penalty for Rs.10,000/- for the default committed by the assessee as discussed above.

6. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that the health condition of one of the partner of the firm

was very critical, therefore the compliances could not be made. The assessee in support of its claim has also produced the copy of medical certificates.

The assessee in support of its claim has also relied on the judgment of the Hon'ble Apex Court in the case of *Hindustan Steel Limited v. State of Orissa* reported in 83 ITR 26(SC).

However, Ld. CIT(A) disregarded the contention of the assessee and confirmed the order of AO.

Being aggrieved by the above finding of Ld. CIT(A), the assessee is in appeal before the Tribunal.

7. The Id. AR before us filed paper book which is running pages from 1 to 21 and submitted that all the queries raised by the AO during assessment proceedings were duly replied by the assessee as evident from the order of AO -paragraph number 6 which reads as under:-

“6.0 Further various queries were raised before the assessee on different dates, reply of which has been submitted, perused and placed on record.”

Accordingly the Id AR submitted that substantial compliances were made by the assessee during the course of assessment proceedings. Therefore no penalty in the instant case is called for. The Ld AR in this regard has relied on the order of Hon'ble ITAT in the case of *Akhil Bhartiya Prathmik Shikshak Sangh Bhawan Trust Vs. Assistant Director of Income tax* reported in 115 TTJ (Del) 419. The relevant extract reads as under:-

“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”.

On the other hand, the Id. DR submitted that the medical certificates were not produced before the AO to justify that there was reasonable cause which prevented the assessee to respond to the notice issued under section 142(1) of the Act. The Id. DR also

contended that the assessee in the instant case was intentionally delaying the proceedings to take the assessment at the fag-end in order to divert the attention of the AO. He vehemently supported the order of lower authorities.

In rejoinder, Ld AR submitted that all the medicals bills were duly produced before the Ld CIT(A) and he got co-terminus power to verify the same but he failed to do so. The Ld AR also submitted that the penalty cannot be imposed on account of technical ground. In this regard the learned AR relied on the judgment of Hon'ble Supreme Court in the case of Hindustan Steel (*supra*).

8. We have heard the rival contentions of both the parties and perused and carefully considered the material on record; including the judicial pronouncements cited and placed reliance upon. At the outset it was observed that in the identical facts and circumstances the Hon'ble Delhi Tribunal has decided the issue in favour of assessee in the case of *Akhil Bhartiya Prathamik Shikshak Sangh Bhawan Trust (Supra)* by observing that the assessment was framed under section 143(3) of the Act which proves that substantial compliances were made by the assessee. Thus it cannot be held that the default committed by the assessee was willful. Thus, we are inclined not to uphold the order of lower authorities.

9. Similarly, we also find that the Hon'ble Apex Court in the case of Hindustan Steel (*supra*) has held that the penalty should not be imposed unless the assessee acted deliberately. The relevant extract reads as under :

“Obligation is the result of a quasi- criminal proceeding, 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 bona fide belief that the offender is not liable to act in the manner prescribed by the statute.”

As we have already decided the issue in favour of assessee in view of the above facts, therefore we are not inclined to comment on the contentions raised by the Ld DR at the time of hearing as well as observations made by the Ld CIT(A) in his order.

Respectfully following the aforesaid judgments we reverse the order of authorities below. Accordingly, AO is directed to delete the same.

10. In the result, assessee's appeal is allowed.

Coming to ITA No.821-824/Kol/2016 for A.Ys. 07-08 to10-11.

11. In the remaining appeals, since the facts are exactly identical except figure, both the parties are agreed whatever view taken in the above appeal (ITA No.820/Kol/2016) may be taken in these appeals also, we hold accordingly.

12. In the result, all the appeals of assessee stand allowed.

13. **In combine result, all the five appeals of assessee are treated as allowed.**

Order pronounced in open court on 17/11/2017

Sd/-
(न्यायिक सदस्य)
(S.S.Viswanethra Ravi)
Judicial Member

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
Accountant Member

*Dkp, Sr.P.S

दिनांक:- 17/11/2017 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-Shri Ratan Kumar. Paul, Thana Road, Gangarmpur, Dakshin Dinajpur, Piin-733124
2. राजस्व/Revenue-DCIT, CC-XXVII, Ayakar Bhawan, Purva, 110, Shanti Palli, E.M. By-pass, Kolkata-107
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary
Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता