

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI A.T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1145 & 1146/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2010-11)

M/s. R.K. Mondal & Brothers	Vs.	I.T.O, W-1(1), Durgapur
Vill + P.O: Kajora Gram, Durgapur, Dist. Burdwan, Pin-713338.		Aayakar Bithi, City Centre, Durgapur – 713216.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAHFR 6294 C		
(Appellant)	..	(Respondent)

Appellant by :Shri U. Dasgupta, Advocate

Respondent by :Shri G.H. Seema, Addl. CIT

सुनवाईकीतारीख/ **Date of Hearing** : **15/01/2018**

घोषणाकीतारीख/**Date of Pronouncement** : **25/01/2018**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

These captioned appeals filed by the assessee, pertaining to Assessment Year 2010-11, are directed against orders passed by the CIT(A)- Durgapur, in Appeal No.146/147/CIT(A)/DGP/2012-13, dated 18.02.2016, which in turn arises out of orders passed by the Assessing Officer u/s 271A & 271(1)(b) of the I.T. Act, 1961 (hereinafter referred to as the 'Act').

2. Since, these two captioned appeals relate to the same assessee, same assessment year, therefore, these have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. These two captioned appeals filed by the assessee against the orders of CIT(A) confirming the penalty in respect of violation of section 271A & 271(1)(b) of the I.T. Act, 1961.

4. First, we consider ITA No.1145/Kol/2016 in assessee's appeal in A.Y 2010-11, which relates to violation of section 271A of the I.T. Act wherein the main grievance of the assessee is that the assessee maintaining books of account and books of accounts are subject to tax audit u/s 44AB of the Act. In spite of this, the AO imposed penalty u/s 271A of the Act.

5. We note that during the assessment proceedings which are discernible from the assessment order, the AO has himself stated that Id. Counsel for the assessee has produced cash book and other documents and because of that he proceeded to do the best judgment assessment u/s 144 of the Act. We note that during the appellate proceedings before the CIT(A), when the CIT(A) asked the AO to examine the issue and send the remand report to him and when the remand report was sought, the AO in his remand report clearly stated that cash book, ledger accounts and some payment vouchers were submitted by the assessee before him. We note that AO has not found any defects in the books of accounts produced by the assessee. When we consider the facts in totality during assessment proceedings and during appellate proceedings before CIT(A), we note that assessee, in fact, has been maintaining books of accounts as per the provisions of law. Moreover, the fact that assessee was maintaining the books of accounts and other records which were evident from the reply of the Id. Counsel for the assessee during the assessment proceedings where the Id. Counsel for the assessee submitted before the AO that the books of accounts were being maintained by the assessee but were misplaced, which fact was also recorded by the AO in his assessment order. Therefore, in sum and substance, the assessee was, in fact, was maintaining books of accounts and other records and has produced before the AO in the remand proceedings. Therefore, there is no justifiable reason to impose penalty u/s 271A of the Act. Therefore, we cancel the penalty u/s 271A of the Act.

6. In the result, the appeal filed by the assessee (in ITA No.1145/Kol/2016) is allowed.

7. Now, we take assessee's appeal in ITA No.1146/Kol/2016 A.Y 2010-11 which relates to penalty imposed by AO and confirmed by CIT(A) u/s 271(1)(b) of the Act. The AO imposed penalty u/s 271(1)(b) of the Act for non-compliance of notices during assessment proceedings.

8. We note that AO has imposed penalty for non-compliance by the assessee on 29.11.2012. The Id. Counsel for the assessee drew our attention of the adjournment application filed by the assessee before the AO seeking adjournment on 29.11.2012. However, the Id. DR drew our attention to aforesaid adjournment application where it has noticed that assessment has been completed, which means, the adjournment application of the assessee was received by the AO after 29.11.2012. However, we note that assessment order could have been passed upto 31.03.2013 meaning thereby, there were four months left to complete the assessment u/s 143(3) of the Act. In the light of the aforesaid facts and taking notice of the adjournment application, we wonder as to why the AO was in tearing hurry to pass the u/s 144 of the Act. We note that assessee had cooperated during the assessment proceedings and filed books of accounts and documents sought by the AO except cash book, ledger accounts and some documents which have been produced by the assessee during remand proceedings. Therefore, based on the factual position, we note that assessee has done a substantial compliance of notices. Therefore, penalty u/s 271(1)(b) should not be levied. Accordingly, we cancel the penalty levied by the AO and confirmed by the CIT(A).

9. In the result, the appeal filed by the assessee (in ITA No.1146/Kol/2016) is allowed.

Order is pronounced in the open court on 25/01/2018.

Sd/-

(A.T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata; दिनांक Dated 25/01/2018

[RS SPS]

Sd/-

(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant- M/s. R.K. Mondal & Brothers
2. प्रत्यर्थी/ The Respondent- I.T.O, W-1(1), Durgapur
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.