

IN THE INCOME TAX APPELLATE TRIBUNAL : 'D' BENCH, KOLKATA

**Before : Shri M. Balaganesh, Accountant Member and
Shri S.S. Viswanethra Ravi, Judicial Member**

ITA No. 204/Kol/2016

A.Y : 2010-11

M/s. P.R. Trading Co.
PAN: AAFFP4503L
[Appellant-Assessee]

Vs.

I.T.O., Ward 2(3), Hooghly
[Department-Respondent]

Appellant by : Shri Alokesh Kundu, Advocate, Id.AR
Respondent by : Shri Arindam Bhattacharjee, Addl, CIT, Id.DR

Date of Hearing : 14-11-2017
Date of Pronouncement : 24-01-2018

ORDER

Shri S.S. Viswanethra Ravi, JM:

This appeal by the Assessee is against the order dt: 16-11-2015 passed by the CIT-(A), 6, Kolkata for the A.Y 2010-11.

2. The only issue is to be decided as to whether the CIT-A was justified in confirming the penalty of Rs.10,000/- imposed u/s. 271(1)(b) of the Act by the AO in the fact and circumstances of the case.

3. The Id. AR submits that the AO initiated the proceedings u/s. 271(1)(b) of the Act alleging that the assessee did not offer any explanation as sought by him on 10-07-2012 in the assessment proceedings.

4. In first appellate proceedings, the assessee contended through written submissions dt. 3-3-2015 that the assessment order was not passed u/s. 144 of the Act and the assessee had never been made compliance of any notice. According to CIT-A, there was no representation on behalf of the assessee inspite of having sufficient

opportunities of hearing afforded by the CIT-A to the assessee and confirmed the penalty imposed by the AO *ex parte*.

5. The Id.AR submits that AO completed the assessment u/s. 143(3) of the Act and referred para 3 of the assessment order dt. 26-03-2013 and argued that the assessee through its A/R filed all the details in response to notices issued u/s. 143(2) and 142(1) of the Act before the AO during the assessment proceedings. The AO did not make any adverse remark in the assessment order that the assessee has failed to comply with the notice issued u/s. 142(1) of the Act and therefore, the imposition of said penalty u/s. 271(1)(b) of the Act and confirmation of the same by the CIT-A on this issue is not justified and in view of above, prayed to cancel the said penalty of Rs.10,000/- imposed by the AO u/s. 271(1)(b) of the Act. The Id.AR also submits that having completed the assessment u/s. 143(3) of the Act, which clearly shows that there was full compliance on behalf of the assessee regarding requirements as sought by the AO in the said proceedings. The Id. AR placed his reliance on the decision of ITAT, New Delhi in the case of Globus Infocom Ltd and referred to para 3 of the said order and argued that the Delhi Tribunal by placing reliance in the case of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan trust Vs. ACIT reported in (2008) 5 DTR (Del) 429, held that imposition of penalty u/s. 271(1)(b) of the Act was patently wrong in view of the fact that the impugned assessment order was passed u/s. 143(3) of the Act. The Id. AR prayed to allow the ground of appeal in this regard and cancel the penalty imposed by the AO u/s. 271(1)(b) of the Act.

6. The Id.DR submits that there were two instances where the assessee did not comply the notice issued u/s. 142(1) of the Act and referred to the penalty order. Further, the assessee failed to give valid reasons for non compliance of the notice issued u/s. 142(1) of the Act and argued that it is a fit case for imposing the penalty and

the AO rightly imposed the same, which was confirmed by the CIT-A and it is justified.

7. Heard rival submissions and perused the material on record. We find that the assessment order dt. 26-03-2013 passed u/s. 143(3), wherein we noticed that there was no allegation of non compliance was made by the assessee in the assessment proceedings AO. It is observed that the assessee through his AR complied with the notice and submitted bills, VAT challan etc, which were examined by the AO. We find that the Id.AR has rightly pointed out that there was no allegation by the AO in not complying with the notice U/Sec 142(1) of the Act in the assessment order. The CIT-A confirmed the penalty by *ex parte* for non compliance of notice dt. 18-05-2012 issued u/s. 142(1). We find that the assessee filed a reply dt. 29-08-2012, which was examined and reproduced by the AO in his order at page 2. However, we find that the facts and circumstances in the case of Delhi Tribunal in the case of Glubus Infocom Ltd *supra* are similar with that of present case and the same is reproduced herein below:-

5. We have heard the rival submissions and perused the material on record. We find that the instant appeal is squarely covered by the decision of the Co-ordinate Bench of ITAT Delhi in the case of Akhil Bhartiya Prathmik Shikshak Sangh Bhawan trust vs ACIT 5 DTR 429 (Delhi Tribunal) wherein the Coordinate Bench in paras 2.4 and 2.5 has held as under:-

I.T.A. No. 738/Del/2014 Assessment Year 2010-11 "2.4 Coming to the issue of recording of satisfaction, it may be mentioned that mere initiation of penalty does not amount to satisfaction as held by Hon'ble Delhi High Court in the case of CIT vs. Ram Commercial Enterprises Ltd. (2001) 167 CTR (Del) 321 : (2000) 246 ITR 568 (Del). In absence of recording of the satisfaction in the assessment order, mere initiation of penalty will not confer jurisdiction on the AO to levy the penalty.

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."

6. As the facts of this case are identical, we hold that the imposition of penalty u/s 271(1)(b) of the Act was patently wrong, specially in view of the fact that the impugned assessment order has been passed u/s 143(3). While setting aside the impugned order, we direct the Assessing Officer to delete the penalty."

8. In view of above, we cancel the impugned penalty of Rs. 10,000/- imposed by the AO and confirmed by the CIT-A. Thus, ground raised by the assessee is allowed. The appeal ITA No.204/Kol/2016 for the A.Y 2010-11 is allowed.

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

Order pronounced in the open court on 24-01-2018

Sd/-
M. Balaganesh
Accountant Member

Sd/-
S.S. Viswanethra Ravi
Judicial Member

Dated :24-01-2018

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Assessee : M/s.P.R. Trading Co. Vill- & P.O- Malinapur, Rajhat, Dist-Hooghly, Pin 712401.
2. Respondent/Revenue : The ITO, Ward 2(2), Hooghly, Aaykar Bhawan, Khadinamore, P.O. Chinsurah, Dist-Hooghly.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order

Sr.P.S,
Head of Office
ITAT Kolkata